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Presidential Documents

Title 3—

The President

Presidential Determination No. 89–5 of October 24, 1988

Determination Under Section 143b(3) of Public Law 99–93, as Amended by Section 702 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100–204)

Memorandum for the Secretary of State

Pursuant to Section 143(b)(3) of Public Law 99–93, as amended by Section 702 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100–204), I hereby determine that the International Civil Aviation Organization, the International Labor Organization, the United Nations Industrial Development Organization, the World Health Organization, and the World Meteorological Organization have made substantial progress toward the adoption and implementation of decision-making procedures on budgetary matters that assure that sufficient attention is paid on these matters to the views of the United States and other member states which are major financial contributors.

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

Ronald Reagan

THE WHITE HOUSE,
Washington, October 24, 1988.

[FR Doc. 88–26881
Filed 11–16–88; 4:13 pm]
Billing code 3195–01–M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 640]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 640 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 281,875 cartons during the period November 20 through November 26, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 640 (§ 910.940) is effective for the period November 20 through November 26, 1988.

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

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

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

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

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

This regulation is consistent with the marketing policy for 1988-89. The Committee met publicly on November 15, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Commitee reports that demand for lemons is good.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.940 is added to read as follows:

[This section will not appear in the Code of Federal Regulations.]

§ 910.940 Lemon Regulation 640.

The quantity of lemons grown in California and Arizona which may be handled during the period November 20, 1988, through November 26, 1988, is established at 281,875 cartons.

Dated: November 16, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-26836 Filed 11-17-88; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

Commission Policy Statement on Training and Qualification of Nuclear Power Plant Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Amended Policy Statement.

SUMMARY: On March 20, 1985, the Nuclear Regulatory Commission (NRC) published a "Commission Policy Statement on Training and Qualifications of Nuclear Power Plant Personnel" (50 FR 11147). The policy statement provided guidance for the training and qualification of nuclear power plant personnel, communicated that the NRC would refrain from new training regulation during an evaluation period of two years, and endorsed the Training Accreditation Program managed by the Institute of Nuclear Power Operations (INPO). The NRC monitored industry initiatives to upgrade training programs through the INPO-managed Training Accreditation Program for a two year period. The

staff's evaluation of this program indicates that it is generally an effective program for ensuring that nuclear power plant personnel have qualifications commensurate with the performance requirements of their jobs. This statement amends the Commission's policy statement that was published on March 20, 1985 regarding the training and qualification of nuclear power plant personnel.

It remains the continuing responsibility of the NRC to independently evaluate applicants' and licensees' implementation of improvement programs to ensure that desired results are achieved. Nothing in this policy statement shall limit the authority or responsibility of the NRC to follow up on operational events or place any limit on NRC's enforcement authority when regulatory requirements are not met.

The amendments are (1) the addition of information regarding the NRC's experience with industry accreditation, (2) a change in the enforcement section to normalize inspection and enforcement in the areas covered by the policy statement, and (3) minor changes to conform to the current status of Commission and industry guidance.

DATE: The amendments to the policy statement are effective November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Jack W. Roe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–1004.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Waste Policy Act (Pub. L. 97–425), section 306, directed the Nuclear Regulatory Commission (NRC) to promulgate regulations or other regulatory guidance for the training and qualifications of civilian nuclear power plant operators, supervisors, technicians and other appropriate operating personnel (including instructional requirements, simulator training requirements, and requirements for requalification examinations and operating tests). On March 20, 1985, the NRC published a policy statement which is responsive to the mandate of the Nuclear Waste Policy Act for regulatory guidance on training and qualifications of nuclear power plant personnel. Regulations or regulatory guidance in the remaining areas have been developed separately as a revision to 10 CFR Part 55—Operators' Licenses.

Following the accident at Three Mile Island, Unit 2 (TMI–2), the NRC continually emphasized the need to upgrade training and qualifications of nuclear power plant personnel. In the "NRC Action Plan Developed as a Result of the TMI–2 Accident" (NUREG–0660 July 1980),[1] the NRC cited its ongoing study of accreditation of training as a possible means of upgrading training programs in the industry. Since that time, the Institute of Nuclear Power Operations (INPO), with its associated National Academy for Nuclear Training (Academy), has developed a training accreditation program which the NRC has found to be an acceptable means of self-improvement in training. On March 20, 1985, the NRC published the Commission Policy Statement on Training and Qualification of Nuclear Power Plant Personnel,[2] allowing the industry a minimum of two years of accreditation activity without the introduction of new NRC training regulations. The two-year evaluation period ended March 20, 1987.

The staff evaluated the results of the INPO accreditation program between March 1985 and March 1987. The staff's evaluation consisted of participating as observers when utilities' training programs were under evaluation by an INPO accreditation team, observing accrediting board activities, and site inspections as described in SECY–85–201.[3] The staff also developed criteria and procedures that were used to assess whether accredited utility training programs include five critical elements. The review criteria have been published as "Training Review Criteria and Procedures" (NUREG–1220).[4] The criteria were applied by the staff in auditing training programs at eight utilities with accredited training programs. The results of these post-accreditation reviews are included in the "Annual Status Report on Implementation of the Commission Policy Statement on Training and Qualification" (SECY–86–119) [5] and "The 2-Year Evaluation on Implementation of the Commission Policy Statement on Training and Qualification," (SECY–87–121) [6] which provided the findings from the evaluations of the INPO-managed Training Accreditation Program over the two-year evaluation period.

Based on the staff's evaluation of the INPO training accreditation program, the NRC concludes that the program is effective in ensuring that personnel have qualifications commensurate with the performance requirements of their jobs. However, the Commission has determined that the policy statement should be amended to reflect the minor modifications made by the National Academy for Nuclear Training to its accreditation program and the NRC staff to the methods by which it monitors the industry training program. In addition, the Commission has determined that the industry has had sufficient time to establish the accreditation program and it is no longer necessary to exercise extra discretion in enforcement when regulatory requirements are not met. Accordingly, the policy statement is amended to eliminate the extra discretion currently provided in the policy statement and to normalize inspections and enforcement actions in the areas covered by the policy statement.

The following sets forth the amendments to the policy of the NRC with respect to training and qualification of nuclear power plant personnel.

Amendments to Policy Statement

(1) The Commission recognizes that the National Academy for Nuclear Training has expanded its accreditation program by establishing an eleventh program for continuing training of licensed personnel.

(2) The NRC staff will expand the methods by which it monitors the industry's training program and its results by performing post-accreditation reviews at selected sites.

(3) The section of the 1985 policy statement entitled "Enforcement Policy" is withdrawn. The NRC will conduct inspections as deemed necessary and take appropriate enforcement action in accordance with the Commission's enforcement policy in 10 CFR Part 2, Appendix C, when regulatory requirements are not met.

Dated at Rockville, MD, this 14th day of November 1988.

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[1] Copies of NUREG–0660 may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5258 Port Royal Road, Springfield, VA 22161. A copy is available for Inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

[2] Commission Policy Statement on Training and Qualification of Nuclear Power Plant Personnel (50 FR 11147; March 20, 1985).

[3] [4] [5] [6] Copies of NUREG–1220, SECY–85–201, SECY–86–119, and SECY–87–121 may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5258 Port Royal Road, Springfield, VA 22161. Copies are available for inspections and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-26731 Filed 11-17-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-122-AD; Amdt. 39-6077]

Airworthiness Directives; Airbus Model A300 and A310-200 Series Airplanes; and Boeing Model 737-200, 737-300, 757-200, 767-200, and 767-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification of final rule.

SUMMARY: This amendment clarifies an existing airworthiness directive (AD), applicable to the two-engine transport category airplanes indicated above that are used in operations over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations (FAR), referred to as "extended range," "EROP," or "ETOP" operations; which currently requires a repetitive check of the fuel crossfeed valve operation during the last hour of cruise on each extended range flight, and replacement of the valve, if necessary. This amendment is necessary to clarify that the requirement for an airplane log book entry of the fuel crossfeed valve operational check is for valve failures only, and to clarify the repair requirements. This clarification is prompted by comments received after the issuance of the AD which indicate confusion over the intent of the AD.

EFFECTIVE DATE: November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Steven P. Clark, Propulsion Branch, ANM-140S: telephone (206) 431-1963. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the FAA issued AD 88-21-03, Amendment 39-6045 (53 FR 39449; October 7, 1988), applicable to the Airbus Model A300 and A310-200 series airplanes, and Boeing Model 737-200, 737-300, 757-200, 767-200, and 767-300 series airplanes, which are used in extended range operations. Extended range operation with two engine airplanes is defined in FAA Advisory Circular 120-42 as an operation over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport and is also referred to as "EROP" or "ETOP" operations. The AD requires a check of fuel crossfeed valve operation during the last hour of cruise on each extended range flight. The AD includes a requirement to enter the operational check outcome in the airplane log.

Comments received after the issuance of that AD indicate that there exists confusion over the FAA's intent with respect to the log book entry requirement. The log book entry is intended to be made only when the fuel crossfeed valve fails to function during the operational check. This is consistent with existing failure reporting requirements. The FAA has determined the wording used in the existing AD does not adequately relay this intent and that the AD must be clarified by specifically stating the airplane log book entry requirement.

In addition, based on comments received, the FAA has determined that paragraph B. of the AD must be reworded to clarify that only the fuel crossfeed valve system component(s) found to be inoperative (not necessarily the entire fuel crossfeed valve) would be required to be repaired or replaced.

Since this action only clarifies instructions in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Clarification

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By providing clarification of the requirements of paragraphs A. and B. of AD 88-21-03, Amendment 39-6045 (53 FR 39449, October 7, 1988), as follows:

Airbus Industrie and Boeing: Applies to all Airbus Model A300 and A310-200 series airplanes, and Boeing Models 737-200, 737-300, 757-200, 767-200, and 767-300 series airplanes, certificated in any category, which are approved for operations over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations, referred to as "extended range," "EROP," or "ETOP" operations. Compliance required within 30 days after the effective date of the AD, unless previously accomplished.

To prevent failure of the fuel crossfeed valve during a single engine diversion on an extended range flight, which could result in the inability of the airplane to stay within the airplane lateral imbalance limit or in fuel starvation in the operating engine before the airplane is able to reach the diversion airport, accomplish the following:

A. Revise the LIMITATIONS SECTION of the FAA-approved Airplane Flight Manual (AFM) or Flight Manual Appendix, as appropriate, by adding the following instructions. This may be accomplished by inserting a copy of this AD in the AFM.

Fuel Crossfeed Valve. Perform an operational check of the fuel crossfeed valve during the last hour of cruise flight during each extended range operation. Enter valve failure conditions resulting from the operational check in the airplane log.

B. Repair or replace, prior to next flight, any fuel crossfeed valve system component not exhibiting proper operation.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Operations Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Operations Inspector (POI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

This clarification becomes effective November 18, 1988.

Issued in Seattle, Washington, on November 10, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-26702 Filed 11-17-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASO-8]

Amendment to Transition Area; Monroe, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Monroe, NC, Transition Area is to delete an arrival area extension. The Wesley RBN has been relocated off-airport and the NDB RWY 23 Standard Instrument Approach Procedure, which required the arrival area extension, has been cancelled. This action raises the floor of controlled airspace from 700 to 1,200 feet above the surface in this particular area.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On August 1, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Transition Area, Monroe, NC (53 FR 28889). An arrival area extension has been required to accommodate the NDB RWY 23 Standard Instrument Approach Procedure (SIAP). The Wesley RBN, which supported the SIAP, has been relocated to an off-airport site and the NDB RWY 23 SIAP has been cancelled. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is to delete an arrival area extension to the Monroe, NC, Transition Area and raise the floor of controlled airspace from 700 to 1,200 feet above the surface in this particular area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Monroe, NC [Amended]

By deleting the phrase, "within 3 miles each side of the 057° bearing from the Wesley RBN (latitude 35°01'25" N; longitude 80°37'01" W), extending from the 6.5-mile radius to 8.5 miles northeast of the RBN" from the present description.

Issued in East Point, Georgia, on November 7, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–26703 Filed 11–17–88; 8:45 am]

BILLING CODE 4910–13–M

VETERANS ADMINISTRATION

38 CFR Parts 3 and 17

Automobile Allowance and Adaptive Equipment Eligibility; and, Devices To Overcome the Handicap of Deafness

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments.

SUMMARY: The Veterans Administration (VA) has amended its adjudication and medical regulations concerning the automobile allowance and adaptive equipment program for certain severely disabled individuals. These amendments are necessary to implement provisions of law and to properly divide regulatory responsibility for these programs consistent with organizational and functional alignments. The effect of these amendments will be to extend automobile adaptive equipment eligibility for certain severely disabled persons, more clearly define program responsibility, and more accurately described prerequisites for devices to overcome the handicap of deafness.

EFFECTIVE DATE: These regulatory amendments are effective December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005, regarding amendments to 38 CFR Part 3, or Frederick Downs, Jr., Director, Prosthetics and Sensory Aids Service (121), Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2011, regarding amendments to 38 CFR Part 17.

SUPPLEMENTARY INFORMATION: On pages 28020–22 of the **Federal Register** of July 26, 1988, the VA published proposed amendments to 38 CFR 3.807 and 3.808 as well as to 38 CFR 17.115d and 17.119a through 17.119d. Interested persons were invited to submit comments, suggestions or objections by August 19, 1988. No comments were received with respect to the proposed changes to 38 CFR Part 3. Only one comment was received regarding the proposed changes to 38 CFR Part 17.

The commenter suggested a somewhat technical change be made in one provision of the regulations to clarify that active duty military personnel may be eligible for automobile adaptive equipment for a disability aggravated by active duty. We agree and have amended proposed 38 CFR 17.119a(a)(2) to add the words "or aggravated by" immediately preceding the words "active military service."

The proposed changes are adopted as amended. We appreciate the interest of the commenter.

The Administrator hereby certifies that these final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has

determined that these final regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program Number is 64.100.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—Health, Health care, Health facilities, Health professions—Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: October 31, 1988.

Thomas K. Turnage,

Administrator.

PART 3—ADJUDICATION

38 CFR Part 3, ADJUDICATION, and 38 CFR Part 17, MEDICAL, are amended as follows:

§ 3.807 [Amended]

1. In the cross-references at the end of § 3.807, the words "Husband or widower. See § 3.51" are removed.

2. In § 3.807 the introductory text, paragraphs (a)(4), (b), (d)(2) and (d)(3) are revised to read as follows:

§ 3.807 Dependents' educational assistance-certification.

For the purposes of dependents' educational assistance under 38 U.S.C. Chapter 35 (see § 21.3020), the child, spouse or surviving spouse of a veteran or serviceperson will have basic eligibility if the following conditions are met:

(a) * * *

(4) Died as a result of a service-connected disability; or (if a serviceperson) * * *

(b) *Service.* Service-connected disability or death must have been the result of active military, naval, or air service on or after April 21, 1898. (Pub. L. 89–358) Effective September 30, 1966, educational assistance for a child (but not for a spouse or surviving spouse) may be authorized based on service in the Philippine Commonwealth Army or as a Philippine Scout as defined in § 3.8(b), (c), or (d) of this part.

(Authority: 38 U.S.C. 1765)

* * * * *

(d) * * *

(2) "Spouse" means a person whose marriage to the veteran meets the requirements of §3.50(a) of this part.

(3) "Surviving spouse" means a person whose marriage to the veteran meets the requirements of §§ 3.50(b) or 3.52 of this part.

3. In § 3.808, the introductory text, paragraph (c) and paragraph (d) are revised and paragraph (b)(1)(iv) is added to read as follows:

§ 3.808 Automobile or other conveyances-certification.

A certification of eligibility for financial assistance in the purchase of one automobile or other conveyance in an amount not exceeding the amount specified in 38 U.S.C. 1902 (including all State, local, and other taxes where such are applicable and included in the purchase price) and of basic entitlement to necessary adaptive equipment will be made where the claimant meets the requirements of paragraphs (a), (b) and (c) of this section.

* * * * *

(b) * * *

(1) * * *

(iv) For adaptive equipment eligibility only, ankylosis of one or both knees or one or both hips.

(Authority: 38 U.S.C. 1902)

* * * * *

(c) *Claim for conveyance and certification for adaptive equipment.* A specific application for financial assistance in purchasing a conveyance is required which must contain a certification by the claimant that the conveyance will be operated only by persons properly licensed. The application will also be considered as an application for the adaptive equipment to insure that the claimant will be able to operate the conveyance in a manner consistent with safety and to satisfy the applicable standards of licensure of the proper licensing authorities. Simultaneously with the certification provided pursuant to the introductory text of this section, a claimant for financial assistance in the purchase of an automobile will be furnished a certificate of eligibility for financial assistance in the purchase of such adaptive equipment as may be appropriate to the claimant's losses unless the need for such equipment is contraindicated by a physical or legal inability to operate the vehicle. There is no time limitation in which to apply. An application by a claimant on active duty will be deemed to have been filed with the VA on the date it is shown to have been placed in the hands of military authority for transmittal.

(Authority: 38 U.S.C. 1902)

(d) *Additional eligibility criteria for adaptive equipment.* Claimants for adaptive equipment must also satisfy the additional eligibility criteria of §§17.119a through 17.119c of this chapter.

(Authority: 38 U.S.C. 1902)

* * * * *

PART 17—MEDICAL

4. Section 17.115d is revised to read as follows:

§ 17.115d Devices to assist in overcoming the handicap of deafness.

Devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders) may be furnished to any veteran who is profoundly deaf (rated 80% or more disabled for hearing impairment by the Veterans Administration) and is entitled to compensation on account of such hearing impairment.

(Authoriry: 38 U.S.C. 1902)

5. Section 17.119a is redesignated as § 17.119d and new §§ 17.119a, 17.119b and 17.119c are added to read as follows (§ 17.119d is republished for the convenience of the reader):

§ 17.119a Eligibility for automobile adaptive equipment.

Automobile adaptive equipment may be authorized if the Chief Medical Director or designee determines that such equipment is deemed necessary to insure that the eligible person will be able to operate the automobile or other conveyance in a manner consistent with such person's safety and so as to satisfy the applicable standards of licensure established by the State of such person's residency or other proper licensing authority.

(a) Persons eligible for adaptive equipment are:

(1) Veterans who are entitled to receive compensation for the loss or permanent loss of use of one or both feet; or the loss or permanent loss of use of one or both hands; or ankylosis of one or both knees, or one of both hips if the disability is the result of injury incurred

or disease contracted in or aggravated by active military, naval or air service.

(2) Members of the Armed Forces serving on active duty who are suffering from any disability described in paragraph (a)(1) of this section incurred or contracted during or aggravated by active military service are eligible to receive automobile adaptive equipment.

(b) Payment or reimbursement of reasonable costs for the repair, replacement, or reinstallation of adaptive equipment deemed necessary for the operation of the automobile may be authorized by the Chief Medical Director or designee.

(Authority: 38 U.S.C. 1902)

§ 17.119b Definition-adaptive equipment.

The term, adaptive equipment, means equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the claimant, and enable that person to meet the applicable standards of licensure. Adaptive equipment includes any term specified by the Chief Medical Director or designee as ordinarily necessary for any of the classes of losses or combination of such losses specified in § 17.119a of this part, or as deemed necessary in an individual case. Adaptive equipment includes, but is not limited to, a basic automatic transmission, power steering, power brakes, power window lifts, power seats, air-conditioning equipment when necessary for the health and safety of the veteran, and special equipment necessary to assist the eligible person into or out of the automobile or other conveyance, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and any modification of the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle.

(Authority: 38 U.S.C. 1901, 1902)

§ 17.119c Limitations on assistance.

(a) An eligible person shall not be entitled to adaptive equipment for more than two automobiles or other conveyances at any one time or during any four-year period except when due to circumstances beyond control of such person, one of the automobiles or conveyances for which adaptive equipment was provided during the applicable four-year period is no longer available for the use of such person.

(1) Circumstances beyond the control of the eligible person are those where the vehicle was lost due to fire, theft, accident, court action, or when repairs are so costly as to be prohibitive or a different vehicle is required due to a change in the eligible person's physical condition.

(2) For purposes of paragraph (a)(1) of this section, an eligible person shall be deemed to have access to and use of an automobile or other conveyance for which the Veterans Administration has provided adaptive equipment if that person has sold, given or transferred the vehicle to a spouse, family member or other person residing in the same household as the eligible person, or to a business owned by such person.

(Authority: 38 U.S.C. 1903)

(b) Eligible persons may be reimbursed for the actual cost of adaptive equipment subject to a dollar amount for specific items established from time to time by the Chief Medical Director.

(Authority: 38 U.S.C. 1902)

(c) Reimbursement for a repair to an item of adaptive equipment is limited to the current vehicles of record and only to the basic components authorized as automobile adaptive equipment. Reimbursable amounts for repairs are limited to the cost of parts and labor based on the amounts published in generally acceptable commercial estimating guides for domestic automobiles.

(Authority: 38 U.S.C. 1902)

§ 17.119d Obtaining vehicles for special driver training courses.

The Administrator may obtain by purchase, lease, gift or otherwise, any automobile, motor vehicle, or other conveyance deemed necessary to conduct special driver training courses at Veterans Administration health care facilities. The Administrator may sell, assign, transfer or convey any such automobile, vehicle or conveyance to which the Veterans Administration holds title for such price or under such terms deemed appropriate by the Administrator. Any proceeds received from such disposition shall be credited to the applicable Veterans Administration appropriation.

(Authority: 38 U.S.C. 1903(e)(3))

[FR Doc. 88-26696 Filed 11-17-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3461-2]

Approval and Promulgation of Implementation Plans; Indiana

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

ACTION: Final rulemaking.

SUMMARY: The USEPA announces actions on revisions to the Indiana State Implementation Plan (SIP) for ozone. The actions are: (1) To approve Indiana's Transportation Control Plan (TCP) for Lake and Porter Counties, because it will result in progress towards attainment of the National Ambient Air Quality Standard (NAAQS) for ozone, (2) to disapprove the ozone attainment demonstration for Lake and Porter Counties, (3) to disapprove Indiana's overall ozone plan for these counties, and (4) to impose in Lake and Porter Counties a construction ban on new or modified major sources of volatile organic compounds (VOCs), as required by section 110(a)(2)(I) of the Clean Air Act (Act). (VOCs are precursors to the formation of ozone.)

USEPA's actions are based upon revisions to the Indiana SIP which were submitted by the State to satisfy the requirements of Part D of the Act.

EFFECTIVE DATE: This final rulemaking becomes effective on December 19, 1988.

ADDRESSES: Copies of the SIP revisions, public comments on the notices of proposed rulemaking, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Rober B. Miller, at 353-0396, before visiting the Region V Office.

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

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

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

FOR FURTHER INFORMATION CONTACT: Robert Miller, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 353-0396.

SUPPLEMENTARY INFORMATION: The Act, as amended in 1977, required States to submit ozone SIPs for nonattainment areas by January 1, 1979 (1979 SIP), which demonstrated attainment of the ozone NAAQS by no later than December 31, 1982. Provisions for attainment date extensions to December 31, 1987, were available for ozone if States could demonstrate that, despite the implementation of all reasonably available control measures (RACM), the 1982 attainment deadline could not be met. States failing to demonstrate attainment by December 31, 1982, were required to submit revised SIPs by July 1, 1982 (1982 SIP).

Lake and Porter Counties were designated nonattainment for ozone on March 3, 1978 (43 FR 8962), and, thus, Indiana was required to submit a Part D ozone plan for the area. The State of Indiana submitted its 1979 ozone (and carbon monoxide (CO)) plan on June 26, 1979, and provided supplemental submittals on: May 19, 1980; September 24, 1980; October 9, 1980; and October 15, 1980. The June 26, 1979, SIP submittal requested that UEPA extend the ozone attainment deadline to 1987 for Lake and Porter Counties, the Indiana portion of the Chicago-Gary-Hammond urban ozone demonstration area,[1] and committed to submit a supplemetal 1982 ozone plan for this area.

The USEPA approved or conditionally approved portions of Indiana's 1979 plan in four rulemakings: January 2, 1981 (46 FR 36); February 11, 1982 (47 FR 6274); October 22, 1982 (47 FR 47552); and January 18, 1983 (48 FR 2124). On February 11, 1982 (47 FR 6274), USEPA approved Indiana's request to extend the ozone attainment deadline for Lake and Porter Counties to December 31, 1987.

On September 2, 1982, Indiana submitted a draft version of its 1982 supplemental Part D ozone plan. Subsequent versions and partial modifications were submitted on: December 2, 1983; February 8, 1985; July 3, 1985; and December 13, 1985.

The USEPA proposed rulemaking on the draft version of the 1982 supplemental Part D ozone plan on February 3, 1983 (48 FR 5106), following a comment letter sent to the State on November 10, 1982. The USEPA proposed additional, related rulemaking on: August 3, 1983 (48 FR 35316); October 9, 1984 (49 FR 39574); January 21, 1986 (51 FR 2732); and April 7, 1986 (51 FR 11576).

On January 26, 1987, USEPA proposed to: (1) Disapprove Indiana's TCP, unless the State provided additional supporting information; (2) defer action on the vehicle inspection and maintenance (I/M) portion of the Indiana plan; and (3) approve Indiana's ozone attainment demonstration for Lake and Porter Counties. This proposed approval of the attainment demonstration was based on (1) Indiana's adoption of Illinois' analysis of Volatile Organic Compound (VOC) emission reduction requirements necessary in the Chicago area; [2] and (2) Indiana's commitment to adopt sufficient VOC emission control measures in Indiana to achieve the percentage emission reduction requirement. The USEPA proposed to disapprove Indiana's ozone attainment demonstration if the State failed to adopt the necessary VOC emission control measures prior to USEPA's final rulemaking.

Following the January 26, 1987, proposed rulemaking, USEPA continued to review the Indiana ozone plan. These reviews were consolidated and summarized in a Technical Support Document (TSD), dated April 15, 1987. This TSD evaluated the status of the State's adoption and implementation of its stationary source Reasonably Available Control Technology (RACT) regulations for control of VOC emissions and reviewed the implications of the most recent 3 years (1984–1986) of ozone air quality data. USEPA concluded that full RACT regulation adoption and implementation were unlikely to occur by December 31, 1987, in Indiana (and Illinois) and that, based on air quality and VOC emissions estimates, the ozone NAAQS was unlikely to be attained by December 31, 1987, in the Chicago-Gary-Hammond area or downwind in Southeastern Wisconsin.

USEPA received additional Transportation Control Measure (TCM) materials on May 14, 1986, June 10, 1986, March 30, 1987 and April 6, 1987. In accordance with the January 26, 1987 proposal, these documents were to provide: (a) Sufficient documentation to support the basis for choosing to implement certain TCMs for the purposes of VOC emission reductions in Lake and Porter Counties, pursuant to section 108(f) of the Act; (b) a commitment to provide a yearly assessment of implemented TCMs in these two counties, including technical analysis of emission reductions resulting from the implementation of each measure or group of measures; (c) discussion of how the basic transportation needs of these counties were being met, including funding provisions and commitment for such needs; (d) sufficient documentation to support emission reduction benefits for the TCMs included in the State's 1982 TCP for Lake and Porter Counties (these TCMs include speed limit review, placing traffic signals on flash at certain lightly traveled intersections, removing unnecessary stop signs, carpooling, and vanpooling); and (e) a list of planned transportation measures and projects that might adversely affect air quality and that would be delayed if expected emission reductions or air quality improvements do not occur. In a TSD dated May 13, 1987, USEPA reviewed the information submitted by the State. USEPA concluded at that time that the State had provided all requested information and documentation concerning its TCP.

Based on its continuing review of the status of Indiana's adoption of VOC control measures and of the more recent ozone air quality data for the years 1984–1986, USEPA changed its position on the approvability of Indiana's overall ozone plan. On July 14, 1987 (52 FR 26439), USEPA proposed to: (1) Approve Indiana's TCP because the State had resolved the deficiencies noted in the January 26, 1987, proposed rulemaking; (2) approve the I/M portions of the Indiana plan, except for the I/M portions dealing with the funding of the enforcement elements of the program; (3) disapprove Indiana's ozone attainment demonstration for Lake and Porter Counties; and (4) find that Indiana's Lake and Porter Counties ozone plan as a whole did not adequately demonstrate attainment of the ozone NAAQS by the end of 1987 or a fixed near term date, and, therefore, did not meet the requirements of Part D of the Act.[3] Based on a lack of an acceptable ozone attainment demonstration, USEPA proposed to implement a construction ban on new and modified major VOC sources in

[1] The Chicago-Gary-Hammond urban 1982 ozone demonstration area (also sometimes referred to hereinafter as the greater Chicago area or the Chicago area) consists of Lake and Porter Counties in Indiana and Cook, DuPage, Kane, Lake, McHenry, and Will Counties in Illinois. Highest ozone levels resulting from emissions from this area were found in Racine and Kenosha Counties, Wisconsin, and Lake County, Illinois.

[2] VOCs photochemically react with other substances in the air to form ozone. The Illinois Environmental Protection Agency determined through ozone modeling that a VOC emission reduction of 46 percent from a 1979 baseline emissions level in the Chicago-Gary-Hammond urban demonstration area was required by 1987 to attain the ozone NAAQS in the demonstration area and its downwind environs.

[3] USEPA discussed the legal rationale for its disapproval of the Indiana ozone plan for Lake and Porter Counties in its General Preamble to the various SIP proposals issued on July 14, 1987. See 52 FR at 26404–26410.

Lake and Porter Counties under section 110(a)(2)(I) of the Act. (USEPA also proposed to disapprove Indiana's plan for Floyd and Clark Counties and impose the construction ban there. USEPA will take further rulemaking action on Floyd and Clark Counties in a future notice.)

A number of comments were received by the USEPA regarding its July 14, 1987, proposed rulemaking. It is the purpose of this final rulemaking to respond to the public comments, to present information on relevant Indiana submittals subsequent to the July 14, 1987, proposal, and to announce USEPA's final rulemaking action. (USEPA will repropose rulemaking on the I/M portion of Indiana's plan in a future **Federal Register** notice.)

Since the proposed revised rulemaking on July 14, 1987 (52 FR 26439), USEPA has conducted reviews of Indiana's subsequent submittals which relate to the Indiana ozone plan for Lake and Porter Counties, Indiana. These reviews were consolidated and summarized in USEPA TSDs dated December 7, 1987, July 5, 1988, and September, 1988. The December 7, 1987, TSD reviewed public comments and suggested revisions to the rulemaking action, as appropriate, in response to the public comments. The July 5, 1988, TSD reviewed peak ozone concentrations for 1985 through 1987 for worst-case monitoring sites in the Chicago area and its downwind environs. USEPA concluded in the July 5, 1988, TSD and in a further addendum of September 1988, that, based on the magnitude and number of monitored exceedances of the ozone standard in Southeastern Wisconsin, violations of the ozone standard in the Chicago area would continue well beyond the 1987 attainment deadline, even if all of the stationary source RACT and I/M measures, that Illinois and Indiana were to adopt as a part of their plans, were fully adopted and implemented in the near term.

Comments on the Proposed Rulemaking

The following summarizes and responds to all public comments received in response to the July 14, 1987, proposed rulemaking on Indiana's Lake and Porter Counties ozone plan. Comments relating to the Indiana vehicle I/M program and Clark and Floyd Counties will be addressed in separate rulemaking actions.

Comment: As part of its basis for a SIP disapproval, USEPA cites violations of the ozone NAAQS in Southeastern Wisconsin, with violations believed to be due to emissions from the Chicago-Northwest Indiana area. USEPA proposed a major source construction ban in Northwest Indiana. The proposed construction ban in Northwest Indiana is expected to have little impact on ozone concentrations in Southeastern Wisconsin, because Chicago is currently under a construction ban, which has had little effect upon air quality in Northwest Indiana.

Response: As the commenter notes, there currently exists a construction ban on new and modified major sources of VOCs and CO which are located in the Illinois portions of the greater Chicago area designated nonattainment for these pollutants.[4] It is impossible to determine precisely the impact this construction ban has had on air quality conditions in the Chicago area.

Moreover, USEPA believes that, regardless of impact it must impose a construction ban on new and modified major sources of VOCs in Lake and Porter Counties, because it is disapproving the Indiana ozone plan for this area. Section 110(a)(2)(I) of the Act requires that each SIP prohibit the construction or modification of major sources of pollution in any nonattainment area whose SIP does not meet the requirements of Part D to Title I of the Act, sections 171–177. On July 2, 1979 (44 FR 39471), USEPA published a regulation that inserted the section 110(a)(2)(I) construction ban into SIPs that lacked them and clarified the scope of bans in SIPs that had them.

Under section 172 of the Act, Indiana's ozone SIP for Lake and Porter Counties was required to provide for attainment of the ozone NAAQS by December 31, 1987. Since USEPA has today decided that Indiana's plan did not provide for attainment by the statutory deadline or any fixed near-term date beyond the deadline, the plan does not meet the requirements of Part D. The section 110(a)(2)(I) construction ban on new or modified sources of VOCs located in Lake and Porter Counties therefore must be imposed.

Comment: The USEPA is warranted in disapproving the Indiana plan due to the State's administrative failure to adopt regulations covering coke oven by-product recovery emissions control. The USEPA, however, is not warranted in imposing third-party source construction bans as the solution to an administrative problem.

Response: See the response to the previous comment.

Comment: A commenter questioned the consistency of USEPA's actions. On January 26, 1987 (52 FR 2728), USEPA proposed to approve Indiana's ozone attainment demonstrations for Clark, Floyd, Lake, and Porter Counties, based on the State's commitments to adopt sufficient VOC control measures to achieve the ozone NAAQS by the end of 1987. On March 13, 1987, the Indiana Department of Environmental Management (IDEM) submitted its non-CTG RACT rules for marine vessel surface coating and wood furniture/cabinet coating to the USEPA for parallel processing. The rule had been preliminarily adopted by the Indiana Air Pollution Control Board (IAPCB). The State is progressing toward fulfilling its commitments to develop acceptable VOC control rules under its 1982 SIP revision.

USEPA's July 14, 1987, proposed rulemaking appears to prejudge Indiana's ability to meet the State's commitments by the end of 1987 or a fixed near term date. The commenter believes USEPA's July 14, 1987, proposed action is premature and inconsistent with previous proposals, especially given the State's recent progress.

Response: USEPA acknowledges that it proposed to approve Indiana's ozone attainment demonstrations for Lake and Porter Counties on January 26, 1987 (52 FR 2728), and then on July 14, 1987 (52 FR 26442), proposed to disapprove these demonstrations. This reversal in positions was due to the availability of new ozone air quality data for the Chicago area that persuaded USEPA that, even when VOC control measures adopted prior to July 1987 were considered, VOC emissions in Indiana would not be reduced enough to provide for attainment of the ozone NAAQS by December 31, 1987, or any near-term date thereafer. The July 14, 1987, proposed rulemaking (and today's final disapproval of the ozone attainment demonstrations for Lake and Porter Counties) does not in any way prejudge Indiana's ability to ultimately adopt rules that will provide for attainment and maintenance of the ozone NAAQS.

It is true that during the past 15 months Indiana has continued to submit stationary source RACT rules to USEPA that will, when implemented, result in further VOC emissions reductions. However, the 1985 through 1987 ozone air quality data confirm that attainment by a near-term date and maintenance will not occur with only the measures that Indiana and Illinois have previously

[4] Prior to today, EPA's imposition of the section 110(a)(2)(I) construction ban was due solely to the lack of an approved Illinois Part D new source review program. EPA's disapproval today of the Illinois SIP for ozone in the Chicago area now serves as an additional basis for the construction ban or new and modified sources of VOCs, however.

committed to adopt and implement in the near term. Based on this, on May 26, 1988, USEPA issued a notice of SIP deficiency under section 110(a)(2)(H) of the Act to Indiana for ozone for Lake and Porter Counties.

Comment: The IDEM commented that it would maintain an expeditious track for final resolution of deficient elements in its ozone plan. IDEM presented the following schedule for rule development and promulgation:

Limitation of Benzene Emissions from Coke Oven By-Product Recovery Plants: This rule was preliminarily adopted by the IAPCB on July 1, 1987, and submitted to the USEPA for parallel processing on July 17, 1987. IDEM reviewed public comments from a hearing held on August 26, 1987. The provisions of the rule were to be presented for final IAPCB adoption on November 4, 1987. Following final IAPCB adoption on November 4, 1987, the rule was to be sent to the USEPA as a SIP revision.

Indiana postponed rule development for coke oven by-product recovery plants, in anticipation of Federal adoption and promulgation of a National Emission Standard for Hazardous Air Pollutants (NESHAP) rule for this source category. This promulgation is behind schedule. Even though USEPA's delay is not cause for Indiana's inaction, any State attempt to develop a parallel set of rules for these plants would no doubt be frustrated by the potential for inconsistency with any eventual Federal rule and by the complexity of these plants. Nevertheless, Indiana did adopt and will initiate implementation of a coke oven by-product recovery plant rule. Although it was not possible to implement the controls required by the rule before December 31, 1987, the State believes it is requiring emission reductions as expeditiously as practicable.

Response: As IDEM noted, any delay in promulgation of a federal NESHAP for coke oven by-product recovery plants did not excuse Indiana from placing emission controls on these sources of VOCs (or other sources of VOCs with equivalent reductions) by December 31, 1987. Indiana submitted its coke oven by-product recovery plant rule to USEPA on April 11, 1988. (This rule will be the subject of future rulemaking by USEPA.) Even if the rule is fully approved, however, recent ozone air quality data demonstrate that the resulting decrease in VOC emissions from these sources will not lower Indiana VOC emissions sufficiently to provide for attainment and maintenance of the ozone standard in the greater Chicago area in the near-term future.

Comment: A final disapproval of Indiana's 1982 ozone plan seems to be inconsistent with the likely contents of USEPA's post-1987 ozone policy, which will recognize good faith efforts.

Response: USEPA has not yet published its final policy on treatment of areas that did not attain the ozone NAAQS by December 31, 1987, the statutory deadline. USEPA is currently reviewing public comments on its proposed post-1987 ozone policy, which was published on November 24, 1987 (52 FR 45044). It is therefore impossible to judge the contents of the final policy.

Contrary to the commenter's suggestion, however, USEPA's disapproval of the attainment demonstration (and, therefore, the plan) for Lake and Porter Counties is fully consistent with the proposed policy. USEPA stated in the proposed policy that it "believes that the Act permits USEPA to grant full approval to a plan * * * only if it includes a persuasive demonstration that the affected area will attain the relevant standard by a fixed date in the near term." See 52 FR 45049, col. 3. The Indiana ozone plan failed to provide for attainment of the NAAQS in the Chicago area by December 31, 1987, nor does it contain a persuasive demonstration that the area will attain the standard in the near-term, with maintenance thereafter. Thus, USEPA's action to disapprove the Indiana ozone plan is not inconsistent with the proposed post-1987 ozone policy.

Comment: A commenter noted that, through the promulgation process for the proposed National Emission Standard for Hazardous Air Pollutants (NESHAP) for coke oven by-product recovery plants, Indiana has abdicated most of its responsibility for the Lake and Porter Counties' ozone SIP to the Federal Government. Such an action does not constitute reasonable and satisfactory progress. Therefore, it recommended that USEPA take all available steps to obtain the required VOC reductions.

Response: USEPA agrees that Indiana's delay in adopting emissions controls for VOC emissions from coke oven by-product recovery plants has impeded progress in reducing VOC emissions in the State. Indiana did, however, adopt a coke oven by-product recovery rule on February 3, 1988, and submitted the rule to USEPA for its approval on April 11, 1988. USEPA currently is reviewing the rule, and will decide upon its adequacy in a separate rulemaking in the future.

Comments: A commenter requested that its comments submitted in response to USEPA's January 26, 1987, proposed rulemaking on the Indiana SIP, be incorporated with comments on the July 14, 1987, proposed rulemaking. These incorporated comments are summarized as follows:

a. Based on Indiana's failure to achieve a sufficient VOC emission reduction to attain the ozone NAAQS by December 31, 1987, it is recommended that USEPA disapprove the Lake and Porter Counties' ozone plan.

b. If the Indiana plan is disapproved, USEPA should impose sanctions against Lake and Porter Counties.

c. USEPA, under section 110(c) of the Act, should promulgate an approvable ozone control plan for Lake and Porter Counties.

d. Tardiness on the part of Indiana to develop an approvable plan for Northwestern Indiana, as well as USEPA's lack of diligence in assuring that Indiana complete its SIP development, raises significant doubts about attainment of the ozone NAAQS by December 31, 1987.

e. The ozone demonstration of attainment for Lake and Porter Counties is overwhelmingly based upon the Federal promulgation of a NESHAP for coke oven by-product recovery plants. The 95,316 kilograms of VOC/day emission reduction projected to occur between 1979 and 1987 for this source category is 80 percent of the 1979 through 1987 VOC emission reduction in Indiana required to attain the ozone NAAQS in Lake and Porter Counties. There is no assurance that the NESHAP will be promulgated by USEPA in time to assure attainment of the NAAQS. In addition, USEPA anticipates that almost all affected facilities will apply for a waiver of up to 2 years from compliance requirements. Northwest Indiana will realize little, if any, VOC reduction from the Indiana plan's predominant control measure by the 1987 attainment deadline.

f. The Indiana Air Pollution Control Board (IAPCB), in an October 25, 1985, letter to the USEPA, states that, should a delay occur in the USEPA promulgation of the coke oven by-product recovery plant NESHAP, Indiana would "commit to evaluate and adopt, as necessary, a mix of control strategies to assure that the required (VOC emission) reduction would be achieved." The IAPCB listed the potential control strategies as State regulation of coke oven by-product recovery plants, Stage II vapor recovery (gasoline service station vehicle refueling emissions), expansion of the applicability of current VOC RACT rules to smaller sources, control of consumer solvent use, and control of architectural surface coating emissions.

However, mid-March 1987 discussions between IAPCB and USEPA indicated that Indiana had yet to take any action on any of these strategies, despite USEPA's delay in promulgating the NESHAP. The State had committed to evaluate and adopt alternate control measures if USEPA did not promulgate the NESHAP by January 1986. The commenter questions the original intent and sincerity of Indiana's SIP commitments.

g. In an October 22, 1985, submittal, Indiana takes credit for emission reductions from RACT III and RACT IV (major source non-CTG RACT). The commenter questions the legitimacy of this emission reduction credit because the State has yet to develop rules for any RACT III or RACT IV sources in Lake and Porter Counties.

h. The October 22, 1985, submittal lists VOC emission credits from stationary and area source emissions inventory decreases. The commenter believes this claim runs counter to the development of a SIP that accommodates growth. A Reasonable Further Progress (RFP) report must document such emission decreases. No such documentation exists at this time. An RFP report is required by the Act. Approval of the Indiana plan without this documentation is not acceptable.

i. Full source compliance with any VOC control rule before December 31, 1987, is a prerequisite to claiming VOC reduction credits for the ozone SIP. The VOC control commitments contained in an October 25, 1985, Indiana submittal will not be fulfilled before the attainment deadline.

j. Indiana decided to abdicate much of its ozone SIP development responsibility for Lake and Porter Counties to the Federal Government by allowing the proposed NESHAP for coke oven by-product recovery plants to become the overwhelmingly major VOC control strategy for these two counties. However, when this regulation failed to materialize in a timely fashion, Indiana has not taken the initiative to follow through on the necessary commitments made in an October 25, 1985, submittal. (This is similar to point f. above.)

k. Based on available evidence, the commenter was convinced that the Indiana plan's attainment demonstration could not be met by the December 31, 1987, deadline date. The commenter recommends that the entire Indiana 1982 ozone plan for Lake and Porter Counties be proposed for disapproval based on the State's failure to comply with sections 110 and 172 of the Act. It appears that Indiana may act to correct its plan if the USEPA proposes to disapprove the SIP revision.

Responses: a. As indicated in the July 14, 1987, proposed rulemaking, further evaluation of 1984 through 1986 ozone concentrations in the Chicago and southeastern Wisconsin area led the USEPA to conclude that the ozone standard would not be attained in the Chicago-Gary-Hammond ozone demonstration area, which includes Lake and Porter Counties, Indiana, until well after December 31, 1987. Peak ozone concentrations monitored during the time period 1985 through 1987 at worst case sites in the greater Chicago area showed that the 1-hour ozone standard has been violated in the 3 most recent years of quality-assured data collection. The magnitude of the exceedances, particularly those monitored in the City of Waukegan (Lake County, Illinois), Racine County (Wisconsin), and Kenosha County (Wisconsin), are such that USEPA does not expect the ozone NAAQS to be attained in the Chicago area by any date in the near-term future. Thus, USEPA must disapprove Indiana's ozone plan for Lake and Porter Counties.

b. In its July 14, 1987, proposal disapproval of the Indiana plan, USEPA proposed to impose a construction ban on new and modified sources of VOCs in the non-attainment areas, as is required by section 110(a)(2)(I) of the Act. Consistent with that proposal, USEPA is imposing the construction ban in Lake and Porter Counties with today's notice. USEPA believes that the imposition of other sanctions (based on the other alleged State failures to which the commenter refers) is not appropriate at this time, but is continuing to evaluate the necessity for these sanctions.

c. USEPA is currently a defendant in a lawsuit brought by the State of Wisconsin, in which Wisconsin seeks an order requiring USEPA to promulgate a federal implementation plan (FIP) under section 110(c) of the Act for the Indiana and Illinois portions of the Chicago nonattainment area. See *Wisconsin v. Thomas*, Civil Action No. 87–C–0395 (E.D. WI). Based on USEPA's disapproval of the Indiana ozone plan today for failure to provide for attainment of the ozone NAAQS and on USEPA's May 26, 1988, issuance of a notice of SIP deficiency, USEPA believes it now could begin work preparatory to promulgating a FIP for the Indiana portion of the Chicago nonattainment area. In any case, however, the question of whether USEPA should proceed with a FIP for this area is outside the scope of today's rulemaking.

d. As noted in the July 14, 1987, proposed rulemaking, USEPA believes that Indiana's delay in adopting and implementing required VOC control measures is partially responsible for the greater Chicago area's failure to attain the ozone NAAQS by December 31, 1987. This belief has been substantiated by 1985 through 1987 monitoring data cited in the USEPA TSD dated July 5, 1988.

e. USEPA agrees that the NESHAP for coke oven by-product recovery plants was not promulgated in time to assist in attainment of the ozone NAAQS by December 31, 1987. USEPA also agrees that it is possible that the coke oven by-product recovery plant facilities affected by the NESHAP or by Indiana's non-CTG RACT rule may apply for a temporary waiver from compliance with either rule. However, rulemaking on USEPA's NESHAP is on a substantially slower path than Indiana's rule and will not affect the Indiana plan (nor attainment of the ozone standard) in the near future. Further, although no source to date has requested a delay in implementing Indiana's rule, the rule does not require final compliance with all of its requirements until December 31, 1990, and, thus, did not provide needed emission reductions by December 31, 1987. USEPA will rulemake on Indiana's coke oven by-product recovery plants rule in future notices.

f. USEPA sees little to be gained by questioning the original intent of Indiana's SIP commitments. USEPA, however, does agree with the commenter that Indiana has failed to carry out many commitments made in its finally adopted SIP revision dated October 25, 1985, in a timely fashion.

g. USEPA agrees that the emission reductions claimed for RACT III and major source non-CTG RACT in the Indiana plan (which are essentially those from the coke oven by-product recovery plant rule) were not fully achieved by December 31, 1987, and still have not been achieved to date. This failure is one of the reasons why USEPA is disapproving Indiana's demonstration of attainment today.

h. USEPA disagrees that the lack of an RFP report is an adequate basis for the disapproval of an ozone SIP revision. A SIP revision provides a plan and related commitments for a future attainment of a NAAQS. An RFP report is needed *after* a SIP is adopted to track the progress towards attaining a NAAQS. An RFP report may point toward needed mid-course SIP revisions. Indiana has submitted annual air quality reports. Such air quality reports may be a component of RFP reports, which should also track emission changes

i. USEPA disagrees that full source compliance with a VOC control rule, prior to December 31, 1987, is a prerequisite for accepting a claimed emission reduction credit. Delay in compliance simply delays when credit for an emission reduction can be applied towards an ozone demonstration of attainment. Such a delay can jeopardize an approval of a demonstration of attainment by causing a delay in NAAQS attainment beyond a specified deadline. USEPA agrees that many of the VOC emission control commitments made in Indiana's October 25, 1985, submittal were not fulfilled by December 31, 1987. Further, even when these reductions are obtained, ozone data from 1985–1987 indicate that the greater Chicago area will still not attain the ozone NAAQS without further reductions. This is one reason why USEPA is disapproving Indiana's 1982 ozone plan today. Also, USEPA notified the Governor of Indiana of the SIP's inadequacy by issuing a notice of ozone SIP deficiency under section 110(a)(2)(H) of the Act for Lake and Porter Counties, *inter alia*, on May 26, 1988.

j. USEPA agrees. See responses f and g, above.

k. USEPA agrees that it must disapprove the Indiana ozone SIP revision for failure to provide for the attainment and maintenance of the ozone NAAQS by the December 31, 1987, deadline or any other fixed date in the near-term. This is the action proposed by USEPA on July 14, 1987, and made final today.

Vehicle Inspection and Maintenance (I/M)

This portion of the Indiana plan will be addressed in separate rulemaking.

Final Rulemaking Action

In consideration of Indiana's 1982 ozone plan and the public comments received in response to USEPA's July 14, 1987, (52 FR 26439) proposed rulemaking, USEPA takes the following final actions.

1. Indiana's Ozone Transportation Control Plan is approved.

2. The ozone attainment demonstration for Lake and Porter Counties, Indiana is disapproved.

3. The overall ozone plan for those counties is disapproved. (USEPA is retaining, however, its previous approval of the various individual measures in the Indiana ozone SIP, because they are effective means to limit VOC emissions and, thus, minimize the frequency and magnitude of ozone violations in the greater Chicago area. These measures remain federally enforceable.)

4. A construction ban on new and modified major sources of VOCs located in Lake and Porter Counties, Indiana, is hereby imposed as provided for by section 110(a)(2)(I) of the Act.

Regulatory Impact

Under Executive Order 12291 today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V Office listed above.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate Circuit by January 17, 1989. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

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

Date: September 30, 1988.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Authority: 42 U.S.C. 7401–7642.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(68) and (c)(69) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(68) On December 2, 1983, Indiana submitted its transportation control plans as an element in its ozone strategy for Lake and Porter Counties. Further information was submitted on June 10, 1986.

(i) *Incorporation by reference.* (A) Chapter 7, Mobile Source Strategies and Reductions, Sections A.1.a., 2, and 3 and Exhibits 7–1 and 7–3 of Indiana's 1982 ozone and carbon monoxide plan, as adopted by the Indiana Air Pollution Control Board at its November 2, 1983, meeting.

(B) [Reserved]

(ii) *Additional material.* (A) On June 10, 1986, Indiana submitted a May 23, 1986, letter from the Northwestern Indiana Regional Planning Commission discussing the Lake and Porter Counties' transportation control plans and their implementation.

(B) [Reserved]

(69) On December 2, 1983, Indiana submitted its ozone plan for Lake and Porter Counties, as adopted by the Indiana Air Pollution Control Board on November 2, 1983. On March 2, 1984, Indiana submitted as its attainment demonstration for Lake and Porter Counties, Illinois' attainment demonstration for the greater Chicago area. The greater Chicago attainment demonstration, as submitted by Indiana, and Indiana's overall ozone plan for Lake and Porter Counties is disapproved. See §§ 52.773(i) and 52.777(d). The disapproval does not affect USEPA's approval (or conditional approval) of individual parts of Indiana's ozone plan, and they remain approved. See § 52.770(c) (20), (21), (29), (33), (38), (39), (55), (58), and (59).

3. Section 52.773 is amended by adding paragraph (i) to read as follows:

§ 52.773 Approval status.

* * * * *

(i) The Administrator finds that Indiana's ozone plan for Lake and Porter Counties, which was required to be submitted by July 1, 1982, does not satisfy all the requirements of Part D, Title I of the Clean Air Act and, thus, is disapproved. See §§ 52.770(c)(69) and 52.777(d). No major stationary source, or major modification of a stationary source, of volatile organic compounds may be constructed in Lake and Porter Counties, unless the construction permit application is complete on or before December 19, 1988. The disapproval does not affect USEPA's approval (or conditional approval) of individual parts of Indiana's ozone plan, and they remain approved.

4. The introductory text of § 52.777(c) is amended by adding the date "1979" between the word "The" and the continuation of the sentence: "Indiana plan for Clark * * *".

5. Section 52.777 is amended by adding paragraph (d) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(d) *Part D—Disapproval.* The 1982 Indiana plan for Lake and Porter County is disapproved because it does not assure the attainment and maintenance of the NAAQS there. See

§§ 52.770(c)(69) and 52.773(i). No major stationary source, or major modification of a stationary source, of volatile organic compounds may be constructed in Lake and Porter Counties, unless the construction permit application is complete on or before December 19, 1988. The disapproval does not affect USEPA's approval (or conditional approval) of individual parts of Indiana's ozone plan, and they remain approved.

* * * * *

[FR Doc. 88-23473 Filed 11-17-88; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[FRL-3478-5]

Delegation of Authority to the State of New Mexico for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The Environmental Protection Agency (EPA) announces the delegation of full authority to the State of New Mexico to implement and enforce additional source categories of the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) including the subsequent revisions and amendments to the standards for which full authority had been delegated to the State by the previous delegation agreement of March 15, 1985. The last coverage update of the delegation agreement was approved on February 2, 1988, and a notice of it was published in the **Federal Register** (53 FR 3891). Based on the State's request of July 15, 1988, the EPA has now granted full authority to the State for the NSPS and NESHAP through January 28, 1988, applicable only in certain areas of the State.

This delegation of authority does not apply to the sources located in Bernalillo County, New Mexico, or to the sources located on Indian lands as specified in the delegation agreement and in this notice. This delegation of authority is not applicable to the NESHAP radionuclide standards specified under 40 CFR Part 61.

EFFECTIVE DATE: November 10, 1988.

ADDRESSES: The State's request and delegation agreement may be requested by writing to one of the following addresses:

Chief, SIP New Source Section (6T-AN), Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone: (214) 655-7214.

Chief, Air Quality Bureau, New Mexico Environmental Improvement Division, P.O. Box 968, Santa Fe, New Mexico 87504-0968, Telephone: (505) 827-0020.

All other requests, reports, applications and such other communications which are required to be submitted under 40 CFR Part 60 and 40 CFR Part 61 (including the notifications required under Subpart A of the regulations) for the affected facilities, in areas outside of Indian lands or Bernalillo County, should be sent directly to the State of New Mexico at the above address. Sources located on Indian lands or in Bernalillo County, should submit the information specified above to the EPA Region 6 Office at the address given in this notice.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., SIP New Source Section, Air Programs Branch, United States Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone number (214) 655-7214.

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allows the Administrator of the EPA to delegate EPA's authority to any State which can submit adequate regulatory procedures for implementation and enforcement of the NSPS and NESHAP programs.

On October 19, 1984, New Mexico requested full delegation of authority for the implementation and enforcement of NSPS through March 14, 1984, and NESHAP through December 9, 1983. The State also requested partial delegation of authority for the technical and administrative review of new or amended NSPS and NESHAP in the October 19, 1984 letter. The delegation request was granted to the State subject to the conditions and limitations specified in the delegation agreement which was approved on March 15, 1985. The March 15, 1985, delegation agreement provided full authority for the State to implement and enforce the NSPS and NESHAP through March 14, 1984, and December 9, 1983, respectively. Also, the State received partial authority for implementation of NSPS and NESHAP subparts effective after the specified dates in the State regulations and for amendments of fully delegated NSPS and NESHAP subparts after the dates specified above. The State's authority was approved only for the areas outside of Indian lands and Bernalillo County. The last coverage update of the delegation agreement was approved on February 2, 1988, and a notice of it was published in the **Federal Register** (53 FR 3891).

On July 15, 1988, the NMEID requested the EPA to grant full authority for additional source categories and amendments to the fully delegated NSPS and NESHAP subparts by extending the coverage date through January 28, 1988, for the NSPS and NESHAP. Based on review of State's Air Quality Control Regulations (AQCR) 750 (for NSPS) and 751 (for NESHAP), the EPA delegated full authority to the State as requested in the letter of July 15, 1988. AQCRs 750 and 751 incorporate the Federal NSPS and NESHAP by reference through the date specified above. The provisions and conditions specified in the March 15, 1985, delegation agreement shall remain unchanged and effective except the revision of the appropriate dates as cited above. The revised authorized dates have been listed in Table 1 for NSPS and Table 2 or NESHAP. These tables noting the revise effective dates have been approved by the Regional Administrator, and are thereby incorporated as part of the March 15, 1985, delegation agreement. This delegation of authority is not applicable to the NESHAP radionuclide standards specified under 40 CFR Part 61.

Today's notice informs the public that the EPA has expanded the State's full authority to implement and enforce the NSPS and NESHAP through January 28, 1988. All reports required pursuant to the Federal NSPS and NESHAP (40 CFR Part 60 and 40 CFR Part 61) by sources located in the State of New Mexico, in areas outside of Indian lands or Bernalillo County, should be submitted directly to the New Mexico Health and Environment Department, Environmental Improvement Division, Air Quality Bureau, P.O. Box 968, Santa Fe, New Mexico, 87504-0968. Sources located on Indian lands or in Bernalillo County, should apply to the EPA Region 6 Office at the address given in this notice.

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

This delegation is issued under the authority of sections 111(c) and 112(d) of the Clean Air Act, as amended (42 U.S.C. 7411(c) and 7412(d)).

List of Subjects

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power

plants, Fossil-fuel fired steam generators, Glass and glass products, Grain, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Fertilizer, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Date: November 10, 1988.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 88-26730 Filed 11-17-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[Gen Docket No. 85-301; FCC 88-331]

Standards for Cable System Terminal Devices

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The Commission revises its recently adopted regulations in GEN Docket 85-301, concerning standards for cable system terminal devices. This action is taken in response to petitions for reconsideration filed by the General Instrument Corporation, the National Cable Television Association, Oak Communications, Inc. and Scientific-Atlanta, Inc. The objective is to diminish the economic impact that the new regulations might have had on some businesses, and to modify the technical specifications recently adopted for cable system terminal devices to account for the design variations currently found in the marketplace for such products.

EFFECTIVE DATE: December 16, 1988.

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

FOR FURTHER INFORMATION CONTACT: Liliane Volcy, Technical Standards Branch, Office of Engineering Technology, tel: (202) 653-7316 or 653-6288.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum, Opinion, and Order, Gen Docket 85-301, FCC 88-331, adopted October 13, 1988, released November 9, 1988.

The full texts of the Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Memorandum, Opinion, and Order

1. By this Memorandum, Opinion, and Order, the Commission revises its standards recently adopted for cable system terminal devices ("CSTDs") under Parts 15 and 76 of its Rules. This action is taken in response to petitions for reconsideration filed by the General Instrument Corporation, the National Cable Television Association, Oak Communications, Inc., and Scientific-Atlanta, Inc. The petitioners have requested that the Commission reconsider its new regulations adopted in the *Report and Order*, 52 FR 22459 (June 12, 1987), in particular with respect to radiated emission limits, output signal limits, authorization procedures, and the rights of cable system operators. The Commission concludes that reconsideration of its decision in the *Report and Order* is warranted in part, and, therefore, amends its rules.

2. The Commission finds that most of the requests made by the petitioners stem from the need for additional clarification of the Commission's actions in the *Report and Order*, or for a more gradual implementation of the regulations. In response to the petitions for reconsideration filed, changes are being made to the new rules as follows: (1) CSTDs are placed under notification instead of certification; (2) the technical standards for CSTDs are to be applied in a more gradual phase-in period with some relaxation of the conducted output limits, in particular for heterodyne CSTDs; (3) the rights of cable system operators to disconnect interfering CSTDs are more clearly defined; and (4) other terminal devices with similar operating characteristics as CSTDs are to be subject to the same technical requirements. Part 15, Subpart H is rewritten in its entirety to avoid any possible confusion regarding the applicability of the regulations to cable system terminal devices or other types of TV interface devices. In addition, changes recently made in Part 15, Subpart H, in Gen Docket 87-107, are incorporated in this *Memorandum, Opinion, and Order*. These changes concern the use of cable input selector switches.

3. Moreover, the Commission notes that the problem outlined by the petitioners are not restricted to CSTDs used with cable systems, but apply to TV interface devices used with a Master Antenna. These devices have similar operating characteristics as CSTDs, and will be treated in a similar fashion as CSTDs.

Procedural Matters

4. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's revised final analysis is as follows:

I. Need For and Purpose of the Rules

The Commission's rules inconsistently apply different standards to cable system terminal equipment based on their ownership and design considerations. These differences range anywhere from the technical standards themselves, to the operating conditions, and authorization requirements. The purpose of the rules adopted herein is to overcome these discrepancies.

II. Summary of Issues Raised by Petitioners in Response to the Final Regulatory Flexibility Analysis, Commisssion Assessment and Changes Made as a Result.

A. Issues Raised

No petitioning or commenting parties specifically addresses the final regulatory flexibility analysis. However, most petitioning parties did address the probable economic burden that they would incur as a result of the new regulatory plan. The necessary design modifications on cable system terminal equipment would not only have an impact on the manufacturing industry, but on the subscriber as well. The petitioners estimated that the additional circuitry needed to bring equipment into compliance with the new regulations would increase the retail cost of a unit anywhere from 12% to 40%. Such an impact would be considerable when up to 75% of the equipment would need to be modified. The revised regulatory plan is expected to resolve these concerns.

B. Assessment

The revised regulatory plan will reduce the burden of compliance significantly since it will be implemented more gradually and will not require manufacturing companies to redesign their products immediately, if redesign is necessary. Although the revised regulatory plan will still impose certain burdens on manufacturing companies, these burdens are the minimum necessary to ensure that terminal devices are more readily available and that such devices do not cause interference.

C. Changes Made as a Result of Petitions and Comments

While no reconsideration or comments concerning the final regulatory flexibility analysis were filed, alternate regulatory plans were presented. Our revised plan takes these suggestions into account and considers the impact of our regulations on business entities (small included) in both the cable and manufacturing industries. The impact of the revised plan will be easier for the manufacturing industry, in particular, to absorb since it will be implemented over a relatively long period of time, and will permit existing inventories to be depleted.

III. Significant Alternatives Considered and Rejected

We have considered all the arguments and alternatives presented in the petitions and comments applicable to the *Report and Order*. After consideration of the issues raised herein, we have revised the rules to resolve the petitioners' concerns where possible, consistent with our objective of ensuring that cable system terminal equipment does not cause interference to authorized radio services.

5. The Secretary shall cause a copy of this *Memorandum, Opinion, and Order* to be sent to the Chief Counsel for Advocacy of the Small Business Administration.

6. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements on the public. Implementation of these new/modified requirements and burdens will be subject to approval by the Office of Management and Budget by that Act.

Ordering Clauses

7. Pursuant to the authority contained in sections 4(i) and 303 of the Communications Act and Section 1.106 of the Commission's Rules, *It Is Ordered* That the petitions for reconsideration of the *Report and Order* filed by parties named herein *Are Granted* to the extent indicated above, and *Are Denied* in all other respects. In addition *It Is Ordered* That Parts 15 and 76 be amended, as shown below, effective December 19, 1988.

8. *It Is Further Ordered* That this proceeding *Is Terminated.*

List of Subjects

47 CFR Part 15

Communications equipment.

47 CFR Part 76

Cable television.

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 is revised to read as follows:

Authority: Secs. 4, 302, 303 and 307 of the Communications Act of 1934, as amended; 47 U.S.C. 154, 302, 303 and 307.

2. Section 15.4 is amended by revising paragraph (u), and by adding a paragraph (x) to read as follows:

§ 15.4 General definitions

* * * * *

(u) *TV interface device:* A restricted radiation device that produces or translates in frequency a radio frequency carrier modulated by a video signal derived from an external or internal signal source, and which feeds the modulated radio frequency energy by conduction to the antenna terminals of a television receiver. Examples of TV interface devices are video cassette recorders, and terminal devices attached to a cable system or used with a Master Antenna (including those used for central distribution video devices in apartment or office buildings).

Note: A TV interface device may be a stand-alone RF modulator, or a composite device consisting of an RF modulator, video source and other components devices.

* * * * *

(x) *Cable system terminal device:* A TV interface device that serves, as its primary function, to connect a cable system operated under Part 76 of this Chapter to a television receiver or other subscriber premise equipment. Any device which functions as a cable system terminal device in one of its operating modes must comply with the technical requirements for such devices when operating in that mode.

* * * * *

3. Subpart H of Part 15 of Title 47 of the Code of Federal Regulations is revised to read as follows:

Subpart H—TV Interface Devices (Cable System Terminal Devices) and Associated Accessories

Sec.

15.602 Cross reference.
15.604 General operating conditions.
15.606 Additional operating conditions for cable system equipment.
15.608 Equipment authorization.
15.610 Specific authorization requirements for TV interface device kits.
15.612 Composite devices.
15.614 Compliance schedule.
15.620 General technical requirements.
15.622 Field strength limits.
15.624 Conducted voltage limits.
15.626 Output signal limits.
15.630 Transfer switch requirements.
15.640 Identification of equipment.
15.642 Identification of TV interface device kits.
15.644 Information to the user for cable system terminal devices.
15.646 Requirements for wires and coaxial cables.
15.650 Methods of measurements.

§ 15.602 Cross reference.

The provisions of Subparts A and B of this part and Subparts I, J and K of Part 2 of this chapter shall apply to a TV interface device. Also, a cable system terminal device and a cable input selector switch shall be subject to the relevant provisions of Part 76 of this chapter.

§ 15.604 General operating conditions.

(a) Operation of a TV interface device is subject to the general operating conditions set forth in § 15.3 of this part.

(b) The operator of a TV interface device shall promptly stop operating the device when that operator is advised by the Commission that the TV interface device is causing harmful interference, and shall not resume its operation until the condition causing the harmful interference has been corrected.

(c) A TV interface device shall at all times comply with the requirements of this subpart.

§ 15.606 Additional operating conditions for cable system equipment.

The provisions of Part 76 of this chapter concerning responsibility for interference shall apply to cable system terminal devices and cable input selector switches.

§ 15.608 Equipment authorization.

(a) A device operating under the provisions of this subpart shall be authorized pursuant to Subpart J of Part 2 of this chapter showing compliance with the technical specifications in this subpart. To determine compliance, a device must be fully exercised with all the external devices and accessories that are intended to be used with it.

Type of device	Authorization.
TV interference device, unless otherwise specified.	Certification.
Cable system terminal device	Notification.
Stand-alone cable input	Verification.

(b) An external device or accessory that is intended to be attached to a TV interface device shall comply with the technical and administrative requirements set out in the rules under

which it operates. For example, a personal computer must be certificated to show compliance with Subpart J of this part.

(c) A device operating under the provisions of this subpart that is submitted to the Commission as a composite device in a single enclosure containing an RF modulator, video source and other component devices shall be submitted on a single application (FCC Form 731) and shall be authorized as a single device.

§ 15.610 Specific equipment authorization requirements for TV interface device kits.

A TV interface device marketed as a kit shall comply with the following requirements:

(a) All parts necessary for the assembled TV interface device to comply with the technical requirements of this subpart must be supplied with the kit. No mechanism for adjustment that causes operation in violation of the requirements of this subpart shall be made accessible to the builder.

(b) Assembly of two TV interface device units of a specific type shall be made in accordance with the instructions being supplied with the product being marketed. If all components required to fully complete the kit (other than those specified in paragraph (a) of this section) are not normally furnished with the kit, assembly shall be made using the recommended components. The assembled unit shall be authorized as any other TV interface device.

(c) The measurement data required for equipment, authorization shall be obtained for both of these units and submitted, when required, with an application for authorization.

(d) A copy of the exact instructions that are provided for assembly of the device shall be submitted with the application for authorization in addition to other material required in Part 2 of this chapter.

§ 15.612 Composite devices.

A composite TV interface device shall comply with the requirements of this subpart, except for the following:

Type of composite TV interface device.	Applicable technical standards.
TV interference device with TV broadcast tuner and antenna terminals, unless otherwise specified.	Subpart C of Part 15 for TV broadcast tuner (including all-channel requirements of §§ 15.65–15.68) and Subpart H of Part 15.
TV interface device with field disturbance sensor.	Subpart F of Part 15 for sensor emanations and Subpart H of Part 15 for other emanations whichever are higher for each frequency.
Cable system terminal device with TV broadcast tuner and antenna terminals.	Subpart H of Part 15 and all-channel requirements of §§ 15.65–15.68.
Cable system terminal device with a low power communication device.	Subpart H of Part 15 and emanation limits for the low power communication device whichever are higher for each frequency.

§ 15.614 Compliance schedule.

(a) *For TV interface devices.* TV interface devices that have been type approved as Class I TV devices prior to April 28, 1983, and that have been labeled with an FCC type approval number may be marketed and operated indefinitely subject only to the non-interference and general requirements of §§ 15.3, 15.604 and 15.620. TV interface devices that have been authorized as such prior to April 28, 1983 by a grant of a waiver of the Rules, may continue to be marketed and operated under the provisions of this subpart without further action on the part of the grantee.

(b) *For cable system terminal devices.* Cable system terminal devices manufactured or imported on and after July 1, 1990 shall comply with the provisions of this subpart. Cable system terminal devices manufactured or imported prior to July 1, 1990, shall have the option of complying either with the provisions of this subpart or with the technical specifications of Part 76 of this chapter.

(c) *For cable input selector switches.* Stand-alone mechanical switches manufactured or imported on or after August 19, 1988, and stand-alone electronic switches manufactured or imported on or after October 28, 1988, shall be subject to the provisions of this subpart. Switches manufactured or imported prior to the dates given in this paragraph need only to comply with the provisions of § 15.3 and Part 76 of this chapter.

§ 15.620 General technical requirements.

(a) A TV interface device shall incorporate circuitry to automatically prevent emanations from the device from exceeding the technical specifications in this subpart. These circuits shall be adequate to accomplish their function when the TV interface device is presented, if applicable, with video input signal levels in the range of 1 to 5 volts; this requirement is not applicable to TV interface devices that use RF input signals or that incorporate built-in signal sources and have no provisions for the connection of external signal sources.

(b) The TV interface device must be so constructed that adjustments of any control accessible to the user will not cause operation in violation of the requirements of this subpart.

(c) The TV interface device shall be designed and constructed, to the extent practicable, so as to preclude the possibility that the consumer may inadvertently attach the output of the device to the receiving antenna, if any.

§ 15.622 Field strength limits.

The field strength of any electromagnetic energy radiated from the cabinet, control circuitry and power leads of a device including that radiated from any associated accessories or attachments shall not exceed the following limits:

Frequncy (MHz)	Field strength measured CISPR quasi-peak (uV/m at 3 meters)
30–88	100
88–216	150
216–1,000	200

Notes: 1. The lower limit shall apply at the edge of two frequency bands.

2. The output terminal of a device shall be terminated by a resistance equal to the rated output impedance.

§ 15.624 Conducted voltage limits.

The RF voltage measured between each power line and ground at the power terminals of a TV interface device shall not exceed 250 microvolts at any frequency between 450 kHz and 30 MHz, inclusive.

§ 15.626 Output signal limits.

(a) The output signals of a TV interface device shall be coupled to the TV receiver by either wires or coaxial cable.

(b) The voltage corresponding to the peak envelope power of the modulated signal during maximum amplitude peaks across a resistance (R ohms) matching the impedance of a TV interface device shall not exceed the following:

Type of equipment	Maximum voltage measured RMS (microvolts)	
	Video	Audio
TV interface device, unless otherwise specified.	346.6 square root(R).	77.5 square root(R).
Terminal device attached to a cable system or used with a Master Antenna (including those used for central distribution in apartments or office buildings).	692.8 square root(R).	155 square root(R).

(c) At any RF output terminal, the maximum voltage of any emission appearing on frequencies removed by more than 4.6 MHz below or 7.4 MHz above the video carrier frequency on which the TV interface device is operated shall not exceed the following:

Type of equipment	Maximum voltage measured RMS (microvolts)
TV interface device, unless otherwise specified.	10.95 square root(R).
Terminal device attached to a cable system or used with a Master Antenna (including those used for central distribution in apartments or office buildings).	692.8 square root(R).

Notes: 1. R (in ohms) is the resistance matching the rated output impedance of the device.

2. Heterodyne terminal devices attached to a cable system (including those used for central distribution in apartments or office buildings) manufactured or imported prior to July 1, 1990, do not have to meet the levels specified in paragraphs (b) and (c) of this section.

§ 15.630 Transfer switch requirements.

When measured in either position, transfer switches shall comply with the following requirements:

Type of equipment	Transfer switch	Required isolation (dB)	Maximum voltage at receiving antenna input terminals (microvolts)
TV interface device, unless otherwise specified.	Mandatory...	Not applicable.	0.346 square root(R).
Terminal device attached to a cable system.	Mandatory, if equipped with antenna input capability.	80 dB from 54 to 216 MHZ. 60 dB from 216 to 550 MHz.	Not applicable.

Notes: 1. R (in ohms) is a resistance matching the rated impedance of the antenna input of the switch.

2. The maximum voltage corresponds to the peak envelope power of the video modulated signal.

3. A transfer switch is not required for a TV interface device that, when connected, results in the user no longer having any need to receive standard over-the-air broadcast signals via a separate antenna.

4. A transfer switch is not required for a device that is intended to be used as an accessory to an approved TV interface device.

§ 15.640 Identification of equipment.

Type of equipment	Language on name plate or label
TV interface device, unless otherwise specified.	This device complies with FCC Rule Part 15. Operation is subject to the following two conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation.
TV interface device that does not receive standard over-the-air broadcast signals.	This device is intended to be attached to a TV receiver, which does not receive over the air broadcast signals. Connection of this device in any other fashion may cause harmful interference to radio communications and is in violation of the FCC Rules, Part 15. *See* 47 CFR Part 15, Subpart H.
Stand-alone cable input selector switch.	This device is verified to comply with FCC Rules Part 15 for use with cable television service.

§ 15.642 Identification of TV interface device kits.

In lieu of the labeling requirements of § 15.640, the following label shall be included in the kit with instructions to the builder that it should be attached to the complete kit:

CERTIFICATION LABEL

(Manufacturers Name)

FCC ID—

This assembled device can be expected to comply with Subpart H of Part 15 of FCC Rules, provided it is assembled in exact accordance with the instructions provided with this kit.

Name, Title, and Signature of Company Official

Statement of Compliance

I certify that I have constructed this kit in exact accordance with the instructions provided with this kit using only the parts provided or recommended by the manufacturer. I understand that the operation of the assembled device is subject to the following two conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation.

§ 15.644 Information to the user for cable system terminal devices.

Information shall be provided to the user of a cable system terminal device about its interference potential and simple measures that a user can take to correct interference. Such information shall be included in a conspicuous place in the instruction manual. If a manual is not provided to the user then such information should be on a pamphlet, on the device itself, or on the packaging.

§ 15.646 Requirements for wires and coaxial cables.

(a) *For TV interface devices.* Wires or coaxial cables to couple the output signals to the TV receiver shall be provided by the manufacturer.

(b) *For cable system terminal devices.* The holder of the grant of authorization for a cable system terminal device shall specify in the instruction manual or pamphlet, if a manual is not provided, the type of wires or coaxial cables necessary to ensure that the unit complies with the requirements of this subpart. The holder of the grant of authorization must provide any wires, coaxial cables or other accessories which are not readily available to the user via retail outlets or mail-order catalogs.

§ 15.650 Methods of measurements.

To determine compliance with the provisions of this subpart the following procedures or equivalent, provided the applicant or manufacturer can demonstrate to the Commission that such procedures are, in fact, equivalent shall be used.

(a) *For TV interface devices:* FCC/OST MP–3, "FCC Methods of

Measurements of Output Signal Level, Output Terminal Conducted Spurious Emissions, Transfer Switch Characteristics, and Radio Noise Emissions," (1985).

(b) *For cable input selector switches:* FCC/OET MP-9, "FCC Procedure for Measuring Cable Television Switch Isolation," (September 1987).

Note: MP-3 and MP-9 are available from the National Technical Information Service (NTIS), 5285 Port Road, Springfield, VA 22161 or from the Commission's current duplicating contractor whose name and address are available from the Commission's Consumer Assistance Office.

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TEVEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 76.5(x) is amended by revising the note as follows:

§ 76.5 Definitions.

* * * * *

(x) * * *

Subscriber terminal.

Note: Terminal devices interconnected to subscriber terminals of a cable system shall comply with Subpart H of Part 15.

* * * * *

3. Section 76.617 is revised to read as follows:

§ 76.617 Responsibility for interference.

Interference resulting from the use of cable system terminal equipment (including subscriber terminal, input selector switch and any other accessories) shall be the responsibility of the cable system terminal equipment operator in accordance with the provisions of Part 15 of this chapter: provided, however, that the operator of a cable system to which the cable system terminal equipment is connected shall be responsible for detecting and eliminating any signal leakage where that leakage would cause interference outside the subscriber's premises and/or would cause the cable system to exceed the Part 76 signal leakage requirements. In cases where excessive signal leakage occurs, the cable operator shall be required only to discontinue service to the subscriber until the problem is corrected.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-26458 Filed 11-17-88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[Ex Parte No. 393 (Sub-No. 2)]

Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes

AGENCY: Interstate Commerce Commission.

ACTION: Final Rule.

SUMMARY: This decision adopts new reporting requirements for Class I railroads to accommodate revenue adequacy standard changes adopted in Ex Parte No. 393 (Sub-No. 1), *Standards for Railroad Revenue Adequacy* (not printed), served December 31, 1986). Additionally, the Commission has adopted the Railroad Accounting Principles Board's Entity Principle. The intended effect of the changes is to improve our determination of revenue adequacy. The Final Rule calculates Return on Investment (ROI) for revenue adequacy on a consolidated basis using the RAPB's definition of entity, adopts a methodology for adding interest income on the working capital allowance to net railway operating income (NROI) and adopts a methodology for excluding income taxes on nonoperating income. These changes are accomplished by adding a new schedule to railroad Annual Report Form R-1. Further, new recordkeeping requirements are set forth for affiliated companies to support and document the ROI methodology.

DATES: *Effective date:* November 18, 1988.

The revised reporting requirement is effective for the 1988 reporting year and is due 30 days after the March 31, 1989 R-1 deadline.

FOR FURTHER INFORMATION CONTACT: Brian A. Holmes, (202) 275-7510. [TDD for hearing impaired (202) 275-1721.]

SUPPLEMENTARY INFORMATION: The Commission proposed to incorporate certain changes adopted in its Notice of Proposed Rulemaking (NPR) served May 11, 1987, and published in the **Federal Register** on May 12, 1987 (52 FR 17792). Based on the comments received and due to the issuance of the Final Report on Railroad Accounting Principles by the Railroad Accounting Principles Board (RAPB) new issues were raised. Accordingly, the Commission issued a Supplemental Notice of Proposed Rulemaking (SNPR), served February 25, 1988 and published in the **Federal Register** on February 26, 1988 (53 FR 5807).

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 289-4357 (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 revision will not have a significant economic impact on a substantial number of small entities and this decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is estimated that an average of 16 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission and the Office of Information and Regulatory Affairs, Office of Management and Budget.

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments on any paperwork burden to OMB by addressing them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Interstate Commerce Commission.

List of Subjects in 49 CFR Part 1201

Railroads, Uniform system of accounts.

Decided: October 28, 1988.

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

Lamboley dissented in part with separate expressions.

Noreta R. McGee,

Secretary.

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

PART 1201 — RAILROAD COMPANIES

Subpart A—Uniform System of Accounts

1. The authority citation for Part 1201 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 11166.

General Instructions [Amended]

2. Instruction 1–9 *Transactions with affiliated companies,* is amended by adding paragraph (f) as follows:

Instruction 1–9 Transactions With Affiliated Companies

* * * * *

(f) Carriers reporting information on a consolidated or combined basis in railroad Annual Report Form R–1 shall maintain a file with appropriate records and supporting data. This shall include work sheets showing revenues, expenses, earnings, investment in assets and accumulated depreciation for all affiliated railroads and rail-related affiliated companies. The work sheets shall also disclose any eliminations. Carriers shall also disclose the methodology used to support segregation of rail-related or other items as appropraite. Further, a file shall be maintained to support and reconcile entity sales, transfers and reclassifications as well as taxes deducted from gains or losses.

* * * * *

Editorial note.—Schedule 250 form and instructions will not be published in the Code of Federal Regulations.

250 CONSOLIDATED INFORMATION FOR REVENUE ADEQUACY DETERMINATION

[Dollars in thousands]

Line No.	Item (a)	Amount (b)
	Adjusted Net Railway Operating Income for Reporting Entity	
1	Combined/Consolidated Net Railway Operating Income for Reporting Entity.	.....
2	Add: Interest Income from Working Capital Allowance—Cash Portion.	.....
3	Income Taxes Associated with Non-Rail Income and Deductions.	.....
4	Gain or (loss) from transfer/reclassification to nonrail-status (net of income taxes).	.....

250 CONSOLIDATED INFORMATION FOR REVENUE ADEQUACY DETERMINATION—Continued

[Dollars in thousands]

Line No.	Item (a)	Amount (b)
5	Adjusted Net Railway Operating Income.	.....
	Adjusted Investment in Railroad Property for Reporting Entity	
6	Combined Investment in Railroad Property Used in Transportation Service.	.....
7	Less: Interest During Construction.	.....
8	Other Elements of Investment (if debit balance).	.....
9	Add: Net Rail Assets of Rail Related Affiliates.	.....
10	Working Capital Allowance	.....
11	Net Investment Base before Adjustment for Deferred Taxes.	.....
12	Less: Accumulated Deferred Income Tax Credits.	.....
13	Net Investment Base	.....

List of Qualifying Affiliates and Nature of Business

Instructions for Schedule 250

This schedule is to be completed by all railroads unless a consolidated schedule is filed. When a consolidated schedule is filed, only one Class I railroad in the affiliated group need file this schedule. Nonfiling carriers within the group should indicate which affiliated railroad is filing the consolidated schedule. If companies are added or subtracted from the railroad entity during the current year then the new entity must footnote this fact and provide restated information for the prior year.

The following instructions should be followed in completing this schedule:

Line

1—Combined/Consolidated Net Railway Operating Income (NROI) should be prepared following the format appearing at the end of Schedule 210 and include all affiliated railroad companies (Classes I, II, III, line-haul and switching and terminal) and all rail-related affiliated companies.

Revenues and expenses from rail-related affiliates should include only rail-related revenues and expenses. If rail-related and nonrail-related revenues and expenses cannot be segregated, or if such segregation is impractical, they may be included in or excluded from NROI in their entirety based on whether the affiliate is predominantly rail-related (i.e., whether the affiliate could exist except for the revenue derived from, or the support provided for, railroad operations). Consolidation procedures should follow generally accepted accounting principles.

2—Interest Income is the actual interest earned on the cash and cash equivalents (Accounts 701 and 702). The average annual balance for the cash and cash equivalents using the format in Schedule 245 to determine interest income shall be determined by averaging the reported figures for Accounts 701 and 702 extracted from the four quarterly Condensed Balance Sheet Reports for the year. If the cash working capital required using the format of Schedule 245 is less than the average cash and temporary cash investment accounts, then a ratio of cash working capital required/cash and temporary cash investments may be applied to actual interest earned on these accounts to arrive at interest income associated with cash working capital allowance. This format does not impact the calculation of working capital.

3—Income taxes (both current and deferred) associated with significant nonrail income and deductions would include items such as the tax impact of the sale of property or income and/or deductions from nonrail sources.

4—Any railroad-related transaction between the railroad entity and others (including affiliates that are not a part of the consolidated entity), or any reclassification of property from carrier to noncarrier status within the entity, shall be reflected at fair market value at the time of the transaction or reclassification. Gain or loss shall be recognized at the same time and reported on this line net of income taxes.

6—This line should include the total investment in railroad property used in transportation service for the consolidated entity, including Class II, III line-haul and switching and terminal affiliated railroads, net of accumulated depreciation. Schedule 352A may be used as a guide.

7—This should include total interest during construction for the railroads in the consolidated entity.

8—This should include total account 80 *debit* balances for the railroads in entity.

9—This is the total rail assets, net of accumulated depreciation, of rail-related affiliated companies in the consolidated entity.

10—This line represents the working capital allowance calculated for railroads (i.e. Class I, II and III) in the consolidated entity. Procedures in Schedule 245 should be used for this calculation.

12—Self-explanatory.

In the space provided at the bottom of this schedule, please list all railroads and rail-related affiliated companies which are being reported in this consolidation, along with the nature of the business of each company.

[FR Doc. 88-26728 Filed 11-17-88; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 53, No. 223
Friday, November 18, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-34; Notice No. SC-88-9-NM]

Special Conditions; Boeing 747-400, Flight Deck Displays and Propulsion Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 747-400 airplane. This airplane will have novel or unusual design features associated with the display of certain airplane system information that is not addressed in the existing regulations. In addition, the propulsion certification requirements of Part 33 and Part 25 do not contain adequate standards by which to determine an acceptable level of safety for a full authority digital electronic control system installed on a transport category airplane. This notice contains additional safety standards which will require proper displays and alerts of sufficient capacity to enable the crew to identify and perform required remedial action and will aslo require full authority digital electronic control (FADEC) systems to have a level of integrity and reliability of current hydromechanical systems. The Administrator finds these special conditions necessary to establish a level of safety equivalent to that established by the airworthiness standards of Part 25.

DATE: Comments must be received on or before December 8, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-34, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-34. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431-2157.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-34." The postcard will be date/time stamped, and returned to the commenter.

Background

On May 17, 1985, the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124-2207, submitted an application to amend Type Certificate A20WE to conclude the Boeing Model 747-400 series airplane. This airplane is a derivative version of the existing Model 747-300 series airplane. The 747-400 will be delivered with PW4000, CF6-80C2, or RB211-524G engines with full authority digital engine controls. Maximum takeoff gross weight will be increased to 870,000 lbs. Cockpit controls will be simplified and automated for operation by a crew of two. Appropriate hydraulics, avionics, pneumatic, and environment control system changes will be made. An optional fuel tank is being offered in the horizontal tail section. Carbon brakes with digital anti-skid will be incorporated. Scheduled completion date for certification is December 1988.

Discussion

1. The Boeing 747-400 uses six Cathode Ray Tubes (CRT) to display all flight, navigation, powerplant, and systems instrumentation, and information. The lower center CRT is shared by displays of secondary engine parameters, fuel system, hydraulic system, and electrical system information. The use of shared display space for displaying various system parameters and schematics is being used on Boeing transport airplanes for the first time. It is not covered by the current regulations.

Part 25 of the FAR was written prior to the development of multipurpose cockpit displays. Sections 25.1303, 1305, and 1307 lists only the required instruments because individual gauges were all that existed at that time. With the introduction of CRT displays, it became possible to display the operating information from many different systems on a single CRT. This diplay allows the operating information to be centralized and displayed in many different formats. Some of the operating parameters presented on these displays share the display space with others or are not permanently displayed. When displays are shared or inhibited, means to alert the crew of parameter exceedances or other information requiring crew awareness must be provided so the crew can take corrective action. In addition to alerting the crew that corrective action is required, the display must have sufficient capacity so that all the information needed by the crew to conduct safe operation of the airplane can be simultaneously displayed. In the event of a failure condition, the data presented to the crew must be arranged and displayed in a manner so as not to cause confusion. The displayed parameters or alerts need to be arranged and edited in a form that effectively communicates to the

flightcrew information necessary for selection of the appropriate corrective actions following a single event, condition, or combination of events.

2. The proposed Propulsion Control System for the Boeing 747–400 airplane is made up of: (1) A dual channel FADEC mounted on each engine's fan case; (2) an array of interfacing aircraft computers which provide data necessary for thrust management, data validation and reversion modes; (3) power levers in the aisle stand; (4) the hydromechanical interfaces on the engines; (5) the power supplies; and (6) the interconnecting wiring. While the software function contained in the engine's FADEC has been validated to a "critical" level, the overall level of integrity and reliability of the installed propulsion control system has not been evaluated to satisfy Part 25 requirements. Unlike conventional hydromechanical controls, the electronic control does not exhibit a "wear out" characteristic but rather exhibits an in-service failure rate which may be somewhat random with time. Therefore, endurance tests or other "mechanical" type evaluations and subsequent tear downs do not establish any significant degree of implied or inherent system design integrity as has been the case with mechanical systems previously evaluated in accordance with Part 25. Therefore, current regulations do not provide for an adequate level of safety for propulsion control system similar to the proposed 747–400 FADEC system and special conditions are necessary to provide system safety levels equivalent to a hydromechanical system. These proposed special conditions would require that the components of the propulsion control system that are directly associated with setting thrust and continued safe operation of each engine must demonstrate a level of system integrity and reliability commensurate with current standards for transport category airplanes.

Type Certification Basis

The type certification (TC) basis for the Boeing Model 747–400 series airplane is proposed to be Part 36 of the Federal Aviation Regulations (FAR); Special Federal Aviation Regulation (SFAR) No. 27–6; and Part 25 of the FAR, as amended by Amendments 25–1 through 25–59, except that the applicable amendment numbers for the following sections are those indicated as follows: Section 25.571 through Amendment 25–9; §§ 25.251; 25.305, 25.607, 25.657, and 25.683 through Amendment 25–22; § 25.1401 through Amendment 25–26; § 25.787 and 25.812 through Amendment 25–31; § 25.675 through Amendment 25–37; § 25.1438 through Amendment 25–40; § 25.107, 25.109 and 25.149 through Amendment 25–41; § 25.331, 25.351, 25.789, and 25.809 through Amendment 25–45; § 25.772 through Amendment 25–46; and § 25.785 through Amendment 25–50 and §§ 25.365 and 25.783 through Amendment 25–53. As proposed, the requirements of the following sections do not apply to this type design because the original certification basis, which did not include these sections, has been determined to be adequate: Sections 25.631, 25.832, 25.858, and 25.1529. The TC basis includes special conditions, exemptions, and equivalent safety findings which are part of the model 747–300 series certification basis. These exceptions, existing exemptions and the noise and environmental requirements are not pertinent to these special conditions. Special conditions concerning flight deck electronic displays, overhead crew rest accommodations, and the reliability of electronic engine controls and thrust management systems are also being considered.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

As the intended type certification (TC) date for the first B–747–400 to install the flight deck display system and the full authority digital electronic control system is in early December 1988, the FAA has shortened the comment period to 20 days in order to make the final special conditions effective prior to that TC date.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Boeing Model 747–400 series airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. The required displays and alerts for each phase of flight must be provided in a timely manner and form that enables the crew to identify and carry out necessary remedial actions.

3. Sufficient display capacity should be provided so that any parameter display or alerting will not suppress another display or alerting that also requires immediate crew awareness necessary for continued safe flight and landing.

4. Displays of parameters or alerts that could cause the subsequent activation of other displays or alerts must be presented in a manner and form to ensure appropriate identification of the most significant hazards and required crew actions.

5. In addition to the requirements of §§ 25.901(c) and 25.903(b) of the FAR, the components of the propulsion control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must at least have the level of integrity and reliability of a hydromechanical system meeting current airworthiness standards.

Issued in Seattle, Washington, on November 8, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–26704 Filed 11–17–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Service Field Organization—Houston-Galveston, Laredo, Dallas/Fort Worth, Port Arthur, TX

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations governing the Customs field

organization by changing the boundaries of the Houston-Galveston, Laredo, Dallas/Fort Worth, and Port Arthur Districts, which lie within the Southwest Region. The purpose of the changes is to place all of the Texas interior ports within the Dallas/Fort Worth District; to move supervision of the port of San Antonio, Texas, and the user-fee airport at Midland, Texas, from the Laredo District to the Dallas/Fort Worth District; and to make minor alterations to the Port Arthur and Houston-Galveston Districts for simplification of administrative functions. Under these proposed changes, ports with similar types of operations will be situated in the same districts. The public and importers will thereby be better served and Customs personnel and resources more efficiently used.

DATE: Comments must be received on or before January 17, 1989.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service (202) 566–9425.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by realigning the boundaries of several districts in the Southwest Region. This will place all of the current Texas interior ports of entry within the Dallas/Fort Worth District. It will move supervision of the port of San Antonio, Texas, and the user-fee airport at Midland, Texas, from the Laredo District to the Dallas/Fort Worth District. San Antonio, an inland port/airport operation, is functionally similar to the Dallas/Fort Worth operation and is more easily accessible to the Dallas/Fort Worth District than it is to the Laredo District due to better air transportation. The user-fee operations at Midland will have more in common with Dallas/Fort Worth's ports than with Laredo's User fee airports are those which, while not qualifying for designation as an international or landing rights airport, have been approved by the Commissioner to receive the services of Customs officers fo processing aircraft entering the U.S. With this proposed change, Laredo will have supervision of functionally similar border ports. These ports are sufficiently large and spread out over such a large geographical area as to require the full attention of the district director. Other alterations in boundaries are minor and for the purpose of simplification of administrative functions.

The proposed revised district boundaries are as follows:

Houston-Galveston District

That part of the State of Texas south of 32 degrees north latitude, east of 97 degrees west longitude, and west of the Neches River except Jefferson County; and the territory included in the port limits of Corpus Christi, Texas. Ports would include: Houston-Galveston, Corpus Christi, Port Lavaca-Point Comfort, and Freeport (all in Texas).

Note: The only changes are to transfer to the Port Arthur District a narrow strip east of the Neches River running along 32 degrees north latitude and to transfer from the Port Arthur District a small portion of Chambers County. This simplifies the boundaries of both districts.

Laredo District

That part of the State of Texas east of the Pecos River, south of 31 degrees north latitude and west of 99 degrees west longitude and that part of the State of Texas south of 28 degrees 30 minutes north latitude and west of 97 degrees west longitude, except the territory within the port limits of Corpus Christi, Texas. Ports would include: Laredo, Brownsville, Del Rio, Eagle Pass, Hidalgo, Progresso, Rio Grande City, and Roma (all in Texas).

Dallas/Fort Worth District

The State of Oklahoma; that part of the State of Texas north of 32 degrees north latitude; that part of the State of Texas which is north of 28 degrees 30 minutes north latitude and between 97 and 99 degrees west longitude; and that part of the State of Texas which is north of 31 degrees north latitude and between the Pecos River and 99 degrees west longitude. Ports would include: Dallas/Fort Worth, San Antonio, Amarillo, Austin and Lubbock, all in Texas; and Oklahoma City and Tulsa in Oklahoma.

Port Arthur District

That part of the State of Texas south of 32 degrees north latitude and east of the Neches River; and the territory included in Jefferson County. Ports would include the consolidated port of Beaumont, Orange, Port Arthur and Sabine, Texas.

Note: The only changes are to raise the northern boundary to 32 degrees and to include all of Chambers County in the Houston-Galveston District. This simplifies boundaries for both districts. No ports are affected.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Authority

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5, dated February 17, 1987 (52 FR 6282).

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. For the same reason, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Customs routinely makes adjustments to its field organization throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country and to facilitate internal operational controls. Although the proposal may have a limited effect upon some small entities in the areas affected, it is not expected to be significant because adjusting the field organization in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Proposed Amendments

It is proposed to amend § 101.3, Customs Regulations (19 CFR 101.3), as set forth below:

PART 101—[AMENDED]

1. The authority citation for Part 101 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1, 66, 1202 (Gen Hdnote. 11), 1624; Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. It is proposed to amend the list of Customs regions, districts and ports of entry in § 101.3(b) in the following manner:

a. In the South West Region under the column headed "Area", directly opposite "Houston-Galveston, Texas" the description would be revised to read as follows: "That part of the State of Texas south of 32 degrees north latitude, east of 97 degrees west longitude, and west of the Neches River except Jefferson County; and the territory included in the port limits of Corpus Christi, Texas."

b. In the South West Region under the column headed "Area", directly opposite "Laredo, Texas" the description would be revised to read as follows: "That part of the State of Texas east of the Pecos River, south of 31 degrees north latitude and west of 99 degrees west longitude and that part of the State of Texas south of 28 degrees 30 minutes north latitude and west of 97 degrees west longitude, except the territory within the port limits of Corpus Christi, Texas." Under the column headed "Ports of entry", the listing of San Antonio would be deleted.

c. In the South West Region under the column headed "Area", directly opposite "Dallas/Fort Worth, Texas" the description would be revised to read as follows: "The State of Oklahoma; that part of the State of Texas north of 32 degrees North latitude; that part of the State of Texas which is north of 28 degrees 30 minutes north latitude and between 97 and 99 degrees west longitude; and that part of the State of Texas which is north of 31 degrees north latitude and between the Pecos River and 99 degrees west longitude. Under the column headed "Ports of entry", the port of San Antonio is added.

d. In the South West Region under the column headed "Area", directly opposite "Port Arthur, Texas" the description would be revised to read as follows: "That part of the State of Texas south of 32 degrees north latitude and east of the Neches River; and the territory included in Jefferson County."

Michael H. Lane,

Acting Commissioner of Customs.

Approved: October 5, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88-26737 Filed 11-17-88; 8:45 am]

BILLING CODE 9109-61-M

19 CFR Part 152

Application of Criteria Utilized in Determining the Eligibility of Planetaria for Duty-Free Admission Under Item 862.10, Tariff Schedules of the United States (TSUS)

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: Under item 862.10, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), articles may be imported free of duty under bond for permanent exhibition by nonprofit institutions established to encourage science or education. Under Customs established criteria for determining the eligibility of merchandise for duty-free entry under this TSUS item, demonstration was considered necessary for planetaria to be fully and effectively exhibited. This conclusion has not been applied to other articles. Accordingly, Customs proposes to align its application of the criteria in the case of planetaria to its application of the same criteria to other articles for which duty-free entry under bond is sought in accordance with the provisions of item 862.10, TSUS. It is anticipated that some planetaria which heretofore would have qualified for duty-free entry will no longer qualify therefor, but will be subject to duty at varying rates, depending on the tariff item number in the TSUS under which each article will be classifiable.

This document invites public comment with respect to the Customs proposed action.

DATE: Comments must be received on or before January 17, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2119, Washington, DC 20229, (202) 566-8237.

FOR FURTHER INFORMATION CONTACT: Kenneth Paley, Entry Rulings Branch, (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

Item 862.10, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), provides for the duty-free entry of articles for permanent exhibition under bond when they are imported by certain types of organizations or for any State or municipal corporation for exhibition. Headnote 1 of Part 5B, Schedule 8, TSUS, which covers articles for permanent exhibition under bond, including item 862.10, TSUS, states that the provisions therein "do not apply to articles intended for sale or for any purpose other than exhibition or erecting a public monument * * *" The subject provision essentially replicates provisions dealing with the duty-free entry for exhibition of works of art and similar articles which have appeared in tariff acts at least as far back as 1897 (paragraph 702, Tariff Act of 1897). These provisions have dealt with items that, normally, were only viewed and did not have moving parts. Over the years criteria evolved which Customs has utilized to determine the eligibility of merchandise for duty-free entry under item 862.10, TSUS. These criteria, detailed in Treasury Decision (T.D.) 78-420 (file 055134), published in 12 Cust. Bull. 929, provide: (1) That the article must be imported for exhibition itself—an educational use of it can only be incidental; (2) the article must be imported by the qualifying institution or its agent; (3) admission can only be charged to defray expenses and the article cannot be used in connection with a commercial venture. Although these criteria have been applied in all cases, it appears that they have not been applied in the same way. The multiple daily use of planetaria, for example, has been considered as part of exhibition because it was felt that demonstration was necessary for full and effective exhibition. This conclusion has not been applied to other articles. For example, a concert organ to be installed in a music hall was considered as a musical instrument and primarily utilitarian rather than an exhibition object. The reasons for the historical distinction between planetaria and other articles

which are imported for permanent exhibition under bond and for which duty-free status is claimed is uncertain. It, however, seems to date back to a time when there were no U.S. manufacturers of planetaria and when the facilities housing such equipment, sometimes donated to the public by philanthropists, were in the nature of governmental culture centers. We recently had occasion to review the application of the above-noted criteria in connection with a request for the duty-free entry of a planetarium projector for a university an inquiry which noted that planetaria are usually purchased for the purpose of making presentations rather than serving as an exhibit to be viewed. Also, the insititutions importing planetaria and seeking duty-free entry, often educational institutions, appear to be using these planetaria primarily for research, teaching, testing or classroom study which is the reason for the existence of these institutions. It appears that persons attending a demonstration of these articles or presentations utilizing them have come to view the pictures, images, lights, sounds, etc., produced by the articles rather than the articles themselves. While the articles may be viewed during such presentations or demonstrations, it is not the purpose for which the articles were obtained by the institution or the reason the persons have attended such presentations or demonstrations. We have, as previously discussed, noted that the utilization of other articles which have a utilitarian purpose, e.g., a concert organ to be installed in a music hall for presentations or demonstrations, have been considered as being primarily imported for such utilitarian purpose even though the article is subject to viewing. We have concluded that the criteria in T.D. 78–420 should be applied in the same manner to all articles for which duty-free entry is sought under item 862.10, TSUS.

Proposed Action

Customs will apply the criteria presented in T.D. 78–420 in a uniform manner. Planetaria which are to be utilized for the making of presentations or demonstrations will normally be considered as being imported for that purpose. The observation of the planetaria, in connection with these presentations or demonstrations, will be considered as being incidental to the purpose for which they are imported. Such position, while resulting from the application of the criteria in T.D. 78–420 in the same manner they are applied to other articles, could produce a result contrary to the substantive finding in the Treasury Decision. That decision considered extensive use to be incidental to the observation of the technical part of a planetarium film projection system. This change regarding the application of the criteria in T.D. 78–420 could result in the disqualification of planetaria, which are primarily used for the making of presentations or demonstrations, from the duty-free treatment under item 862.10, TSUS, that they have heretofore received.

Comments

Before making a determination of this matter, Customs will consider any written comments timely submitted. comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11, Customs Regulations (19 CFR 103.11(b)), between (9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved October 7, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88–26707 Filed 11–17–88; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Part 152

Dutiability of Quota Charges

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: Pursuant to certain bilateral trade agreements, a foreign country may voluntarily restrict the amount of a specified merchandise that it allows to be exported from that country. One of the means of controlling the export of that merchandise is by requiring that an export license, visa, or other quota document be obtained for the exportation. The charge paid to obtain the license, visa or document is known as a quota charge.

In order to properly assess duty on imported merchandise, the value of the merchandise must be determinied by Customs. Generally, the customs value of imported merchandise is the transaction value, which is the price actually paid or payable for imported merchandise that is sold for exportation to the U.S. Currently, when Customs determines the value of imported merchandise, it distinguishes between quota charges which are paid by the buyer to the seller of the merchandise and those paid by the buyer to a party urelated to the foreign seller. If paid by the buyer to the seller, Customs considers the quota charges part of the transction value and accordingly, dutiable. If paid to an unrelated party, Customs has not considered the quota charges dutiable.

This document proposes that all quota charges paid as a prerequisite to the exportation of foreign merchandise to the U.S. will be dutiable, regardless of to whom they are paid. They will be considered part of the transaction value. This change is proposed as a result of Customs recent examination of "quota charge" transactions revealing that payments for quota charges are directly linked to the price actually paid or payable for imported merchandise.

DATE: Comments must be received on or before January 17, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Classification and Value Division (202–566–2938).

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs officers are required by law to appraise imported merchandise to determine its value. Duty rates are usually assessed on the value of the merchandise. The valuation provisions of the Tariff Act of 1930 are found in section 402 (19 U.S.C. 1401a), as amended by section 201, Trade Agreements Act of 1979 (Pub. L. 96–39). Sections 152.100 *et seq.*, Customs Regulations (19 CFR 152.100 *et seq.*), set forth the regulations governing the appraisement and valuation of merchandise.

Generally, pursuant to 19 U.S.C. 1401a, the customs value of imported merchandise is the transaction value. Pursuant to 19 U.S.C. 1401a(b), transaction value is the price actually paid or payable for imported

merchandise when it is sold for exportation to the U.S., plus certain additions not relevant here. Pursuant to § 152.103, Customs Regulations (19 CFR 152.103), the price actually paid or payable will be considered without regard to its method of derivation. Among other things, transaction value may be the result of discounts, increases, or negotiations. The "price actually paid or payable" is defined in § 152.102(f), Customs Regulations (19 CFR 152.102(f)), as the total payment (whether direct or indirect, and exclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the U.S.) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

Quotas

A quota is a control set on the amount of certain merchandise that is either allowed to be imported into the U.S. or exported from another country to the U.S. for a certain period of time so that a domestic interest can be protected. Import quotas are generally established by legislation, by international agreements implemented through directives and by proclamations issued under the authority contained in specific legislation. Quotas on the amount of merchandise permitted to be exported from a specific foreign country to the U.S. are usually negotiated under bilateral or multilateral agreements between the U.S. and other countries.

A prime example of a trade agreement leading to a foreign country restricting its exportations is the Arrangement Regarding International Trade in Textiles, known as the Multi-Fiber Arrangement (MFA). Section 204, Agricultural Act of 1956 (7 U.S.C. 1854), authorizes the President to negotiate agreements with other countries to limit their exports of "any agricultural commodity or product manufactured therefrom or textiles or textile products" and to limit U.S. importation of such articles. Under the authority of 7 U.S.C. 1854, the U.S. is a party to the MFA. According to this trade agreement, the governments of textile supplier countries have agreed with the U.S. to control the exportation of textiles and apparel from those countries. If imports of a particular textile product from a participating exporting country are causing a market disruption in the U.S., the U.S. may suggest to the exporting country that a restraint level be set for the particular product by that country. If a bilateral agreement is not worked out within a certain time frame, the U.S. may then take unilateral action by establishing an import quota for that product.

Pursuant to the MFA, bilateral agreements with various exporting countries have been entered into by the U.S., providing for a limitation or voluntary restraint by the foreign country on the amount of exports of specified categories of textile products for specified periods.

A variety of procedures have been instituted by foreign countries to restrain the level of their exports.

Some bilateral agreements provide that specific merchandise from a specific exporting country will not be permitted entry into the U.S. unless accompanied by a visa from the exporting country. Other procedures involve the exporting country requiring the seller to obtain an export license or a quota document before the merchandise can be exported.

Sometimes, the exporting country grants the export licenses, visas, or quota documents without charge on a first come-first serve basis until the voluntary restraint level is met. In other isntances, it merely allocates quotas on the basis of past performance (prior year's production), or the exporting country sells the export license, visa, or quota document to various manufacturers, middlemen, and/or importers.

In some situations, the exporting country only allows the producer of the specified merchandise to whom the quota was allocated by issuance of an export license, visa or quota document to export the merchandise. In other cases, the exporting country permits the producer to transfer or resell his quota allocation in total or in part to another producer of the specified merchandise. In yet other cases, the exporting country may not require that the person/company to whom quota is allocated be a producer of that commodity. In this situation, that person/company obviously resells the quota allocation to another party.

Quota Charges

The charge paid to obtain an export license, visa, or any kind of quota document entitling specified merchandise to be exported when a limitation on exports for that commodity has been set is called a "quota charge". A quota charge is, in effect, a charge for the privilege of exporting the specified merchandise to the U.S.

Customs Current Practice

In determining the transaction value of merchandise imported into the U.S. from foreign countries that have export controls on merchandise which result in the payment of a quota charge by a producer, shipper or seller, Customs has held that such charges are dutiable as part of the "price actually paid or payable for merchandise when sold for exportation to the United States," if the charges are included as part of the price for the merchandise paid by the buyer to the seller. However, quota charges have not been considered part of "the price actually paid or payable" and, therefore, not considered dutiable, when such merchandise has been bought by a buyer from one seller while the quota charge is paid by the same buyer to someone unrelated to the seller. See, for example, ORR ruling letter 542169 dated September 18, 1980 (TAA #6) and ORR ruling letter 542150 dated January 6, 1981 (TAA #14). Customs rationale for this view has been that moneys paid for quota charges directly to the seller by the buyer are part of the "price actually paid or payable" for the merchandise, but moneys paid for quota charged by the buyer to an unrelated party to the seller are not paid for the merchandise.

Reasons for Proposed Change

Customs' experience leads it to conclude that payments for quota charges are directly linked to the payments made for imported merchandise. Where quota status is a condition of export, and the importer cannot complete the transaction without obtaining quota, a transaction which does not include quota charges does not reflect the complete price of a sale for export to the United States within the meaning of transaction value under 19 U.S.C. 1401a(b). Therefore, payments for quota charges are part of "the price actually paid or payable when sold for export to the United States" and should be considered part of the transaction value. This conclusion is reflected in the three following situations:

(1) Where the seller obtains quota, and includes the cost of obtaining it in the sales price paid by the buyer, the cost of quota is part of the price actually paid when the merchandise is sold for export.

(2) Where the seller obtains quota on behalf of the buyer, and the buyer makes a separate payment to the quota holder for the cost of quota, the cost of obtaining quota, combined with the cost of purchasing the merchandise, constitute the price when sold for export.

(3) Where the buyer independently obtains its own quota from a party unrelated to either the buyer or the seller, the cost of obtaining quota, combined with the cost of purchasing

the merchandise, constitutes the price actually paid when sold for export.

Proposed Action

In accordance with this reasoning, Customs is proposing that quota charges necessary to export merchandise be included as part of "the price actually paid or payable when sold for exportation to the United States," regardless of which party initially pays the quota charge. Accordingly, it is proposed that all payments of quota charges be considered as part of the transaction value of the merchandise and therefore dutiable.

If this proposed interpretive rule is adopted, all prior Customs rulings which exempted from transaction value quota charges paid as a prerequisite to the exportation of merchandise from foreign countries would be revoked, to the extent that they are inconsistent with this rule. Each of the recipients of those rulings would be notified of Customs reversal of its position pursuant to § 177.9(d), Customs Regulations (19 CFR 177.9(d)).

In making this proposal, Customs has taken note of previous Court cases, such as *Panation Trade Co.* v. *United States*, 54 Cust. Ct. 758, A.R.D. 181 (1965), and *Sternfold* v. *United States*, 12 Cust. Ct. App. 172, T.D. 40065 (1924), which have held certain export taxes or charges paid to a foreign government not to be part of dutiable value in a sale for export. However, these cases were so inherently tied to the concept of export value that they are not relevant to the issue of whether quota charges should be deemed to be dutiable for purposes of transaction value.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Services. However, personnel from other offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 26, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88–26708 Filed 11–17–88; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 410, 416, and 422

Federal Old-Age, Survivors, and Disability Insurance Benefits; Black Lung Benefits; Supplemental Security Income for the Aged, Blind, and Disabled; Organization and Procedures; Application of Circuit Court Law

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations withdraw the Notice of Proposed Rulemaking (NPRM) published at 52 FR 2557 on January 23, 1987. That NPRM described a new type of Social Security ruling (Social Security Acquiescence Ruling or "Acquiescence Ruling"), which is available to the public. These proposed regulations reflect a new proposed policy explaining the manner in which we will apply decisions of the United States Courts of Appeals that we determine conflict with Social Security Administration (SSA) policy in adjudicating claims under title II and title XVI of the Social Security Act (the Act) and title IV, Part B of the Federal Mine Safety and Health Act of 1977. The regulation changes will become effective on the date of publication of final regulations.

DATE: To be sure that your comments are considered, we must receive them no later than January 17, 1989.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7452.

SUPPLEMENTARY INFORMATION:

Background

In June 1985, the Social Security Administration first announced a change in the way it would respond to United States Courts of Appeals decisions affecting its programs. This policy provided for the issuance of Social Security Acquiescence Rulings which explain the manner in which we will apply decisions of the United States Courts of Appeals that we determine conflict with SSA policy. As originally announced, these rulings were to be applied only at the administrative law judge hearing level and by the Appeals Council. In January 1986, before we issued any Social Security Acquiescence Rulings, we revised this policy to provide that Acquiescence Rulings would apply at all levels of administrative adjudication (i.e., initial, reconsideration, administrative law judge and Appeals Council) so long as they met certain criteria.

We published a Notice of Proposed Rulemaking (NPRM) at 52 FR 2557 on January 23, 1987, describing the new type of ruling. The NPRM provided that Acquiescence Rulings would apply within the appropriate circuit at all administrative levels of adjudication if:

(1) (a) No prompt relitigation of the policy at issue was to be sought in the relevant circuit; *and*

(b) Application of the ruling at all administrative levels would be workable (i.e., would not result in administrative inefficiency) and feasible *and* would not have an unacceptably adverse effect on Social Security programs or disadvantage individuals already on the Social Security benefits rolls; *or*

(2) A regulatory change to conform national policy to a circuit court ruling was being pursued and there was little doubt of its ultimate publication.

The NPRM provided further that if a ruling did not meet one of these criteria, it would be applied only at the administrative law judge hearing level and by the Appeals Council. However, if we determined that a particular case would be suitable for relitigation, the Acquiescence Ruling would not be binding on the Appeals Council. We received several comments on that NPRM, which we considerd in

developing the new proposed policy announced in these proposed regulations.

These proposed regulations withdraw the NPRM published at 52 FR 2557 on January 23, 1987, introduce a new proposed policy for applying decisions of the United States Courts of Appeals that we determine conflict with SSA policy, explain the manner in which we will apply those decisions, and as part of that policy, describe the limited conditions under which we may decide to relitigate the issue(s) decided by a circuit court in a particular case.

SSA reserved the authority in the previous NPRM to limit the application of Social Security Acquiescence Rulings to the administrative law judge hearing level of and the Appeals Council because of concerns that adjudicators at the initial and reconsideration level would have difficulty in applying some circuit court decisions in a uniform manner. We also were concerned about the potential impact of this new policy on SSA program administration. However, since this policy has been in effect, we have not used these criteria to limit the applicability of any ruling. We have concluded based on our experience with the acquiescence policy that making Social Security Acquiescence Rulings applicable at all levels of administrative adjudication will not have a significant adverse impact on the agency or on the programs we administer.

In reviewing circuit court decisions, we have found that the vast majority of them consider only the issue of whether the Secretary's decision is supported by substantial evidence (the statutory standard for judicial review of the Secretary's final decision). By definition, this type of decision requires no specific action by SSA except to effectuate the court order in question. Accordingly, most circuit court decisions do not conflict with SSA policy; however, a few do conflict with SSA's interpretation of a provision of the Social Security Act or the regulations. Our new policy provides that as to this type of decision, unless we appeal, we will promptly publish a Social Security Acquiescence Ruling. That ruling will apply at all levels of administrative adjudication within the applicable circuit so long as it is in effect, unless the decision, by its nature, applies only at certain levels of adjudication such as a case dealing with the conduct of an administrative law judge hearing.

Some circuit court decisions do not conflict with SSA policy but nevertheless establish an evidentiary or procedural requirement which the Secretary must satisfy in his decisions; for example, requiring specific language in an administrative law judge decision. These decisions may not warrant that a Social Security Acquiescence Ruling be issued since they do not conflict with SSA's policys; however, SSA adjudicators will apply the requirements of this type of decision in deciding claims of individuals residing within the applicable circuit. We may issue written instructions to our adjudicators regarding cases affected by such a decision.

Proposed Regulations

The proposed regulations provide that we will apply United States Court of Appeals decisions that we determine conflict with SSA policy unless the government appeals the decision. We generally will not issue an Acquiescence Ruling for a particular decision until the government has timely exhausted all avenues of judicial review or has decided to refrain from pursuing further judicial review in the particular case.

When the government does not appeal, or is unsuccessful on appeal, we will publish a Social Security Acquiescence Ruling and we will apply the circuit court decision at all levels of administrative adjudication within the applicable circuit to all claims presenting the issue(s) addressed in the ruling unless the decision, by its nature, applies only to certain levels of adjudication. The ruling will describe the case, identify the issue(s) considered, and explain how we will apply the decision within the applicable circuit, including, as necessary, how the decision relates to other decisions within the applicable circuit. We will publish all rulings, including Social Security Acquiescence Rulings as well as all other rulings, in the **Federal Register**. In the past, Social Security Rulings and Social Security Acquiescence Rulings have been published singly and in cumulative annual editions, but have not appeared in the **Federal Register**. All rulings will also be published for sale by the Government Printing Office and made available at district and branch offices as well as the field offices of the Office of Hearings and Appeals. Generally, the rulings will be effective on the date of publication in the **Federal Register**.

If we make a determination or decision on a claim after the date of a circuit court decision, but before we publish an Acquiescence Ruling, and after the publication of the ruling, the claimant requests application of the ruling to the prior determination or decision and can demonstrate that application of the ruling could change the prior determination or decision, we will readjudicate the claim at the same level it was last adjudicated, in accordance with the requirements of the ruling. The readjudication in this circumstance will be limited to consideration of the issue(s) addressed by the ruling. Any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with our regulations. Our conclusion that readjudication is not appropriate will not be subject to further administrative or judicial review.

Although we will apply a circuit court decision which conflicts with our interpretation of the Social Security Act on regulations, circumstances may arise which bring into question whether the circuit court would reach the same conclusion as it did in its prior decision if the issue(s) were relitigated within the circuit. Accordingly, the proposed regulations also establish a process for the relitigation of issues whereby we may apply our interpretation of the Social Security Act or regulations in the future administrative adjudication of claims.

The first step in this relitigation process requires the occurrence of an activating event which raises the question of whether the circuit court would reach the same decision if the issue(s) previously decided were presented to it again. In general, these activating events are:

1. An action by both Houses of Congress that indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law; or

2. A statement in a majority opinion of the same circuit that indicates the court might no longer follow its previous decision if a particular issue were presented again; or

3. Subsequent circuit court precedent in other circuits that supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

4. A subsequent Supreme Court decision that presents a reasonable legal basis for questioning a circuit court decision on which we based a Social Security Acquiescence Ruling.

The second step in the relitigation process requires that the General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concur that relitigation of an issue and application of our interpretation of the

Social Security Act or regulations at the administrative level within the circuit would be appropriate.

The third step in the relitigation process requires publication of a notice in the **Federal Register** that we will apply our interpretation of the Social Security Act or regulations as to the issue that was the subject of the Acquiescence Ruling at the administrative level within the circuit. The notice will explain why we made this decision. We propose to continue the policy of applying our interpretation of the Act or regulations in order to relitigate an issue. This policy allows us to acquiesce in circuit court precedent while still preserving the option to relitigate.

We view Acquiescence Rulings and related **Federal Register** notices as interpretative rules which would be exempt from the notice of proposed rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. section 553(b). If this view is made subject to legal challenge, the Department will not apply the policy statement it issued in 1970 as regards the public's participation in rulemaking with respect to the Ruling or notice at issue. This policy statement noted that although the Administrative Procedure Act exempts from the notice of proposed rulemaking requirements matters relating to public property, loans, grants, benefits or contracts, the Department would waive this exemption and would use the notice of proposed rulemaking procedures in the exempt categories. See 36 FR 2532 (1971).

After we have published a notice in the **Federal Register** of our intent to relitigate an issue that is the subject of an Acquiescence Ruling, we will take steps to expedite administrative and judicial review and resolution of the issue in question and ensure that we are able to comply with any subsequent circuit court or Supreme Court decision. First, any claimant in the appropriate circuit whose claim is made subject to the relitigation procedure established in this regulation will receive a separate notice with the determination or decision on the claim. That notice will explain the difference(s) in policy between the Acquiescence Ruling and our interpretation of the Social Security Act or regulations and inform the claimant that the agency is seeking to relitigate the issue in the circuit. Claims not subject to relitigation will continue to be decided in accordance with the circuit standard contained in the Acquiescence Ruling. Second, the agency will maintain a listing of all claimants who receive such notices so that any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently.

We will attempt to maintain national uniformity in the administration of our programs by seeking Supreme Court review of adverse circuit court decisions which have a major impact on program administration, by clarifying our regulations when their ambiguity has resulted in a circuit court decision interpreting them differently than the way we intended them to be interpreted, by issuing a new regulation(s) if a circuit court decision concerns an issue(s) which the current regulations do not address, and by seeking corrective legislation from the Congress. Accordingly, we will rescind as obsolete a Social Security Acquiescence Ruling when: The Supreme Court overrules or limits a circuit court decision on an issue that was the basis of an Acquiescence Ruling; or a circuit court overrules or limits its prior decision on an issue that was the basis of an Acquiescence Ruling; or a Federal law is enacted that removes the basis for the decision of a circuit court that was the subject of an Acquiescence Ruling; or we subsequently clarify, modify or revoke a regulation or ruling that was the subject of a circuit court decision that conflicts with our interpretation of the Social Security Act or regulations. We will also rescind as obsolete a Social Security Acquiescence Ruling when we subsequently issue a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue was the subject of a circuit court decision that conflicts with our interpretation of the Social Security Act or regulations and that decision is not one which is compelled by the statute or the Constitution.

We are not proposing the acquiescence policy outlined in this NPRM because we believe that this policy, or any acquiescence policy, is legally compelled. Rather, we believe that the particular policy we are proposing is an appropriate exercise of our responsibility to administer the vast and complex Social Security benefit programs in a manner that is least burdensome to Social Security claimants and preserves our ability to attempt to maintain the national uniformity of program administration. We solicit public comment on all aspects of our proposed acquiescence policy, particularly on the manner in which claims subject to relitigation should be selected.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under E.O. 12291 because it will not have annual effect on the economy of 100 million dollars or more, or otherwise meet the threshold criteria. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

These proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because these rules will only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.804 Social Security-Survivors Insurance; 13.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, survivors and disability insurance.

20 CFR Part 410

Administrtive practice and procedure, Black lung benefits, Death benefits, Disability benefits, Miners.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

20 CFR Part 422

Freedom of information, Administrative practice and procedure, organization and functions (Government agencies), Social Security.

Dated: August 19, 1988.

Dorcas R. Hardy

Commissioner of Social Security.

Approved: August 25, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Parts 404, 410, 416, and 422 of 20 CFR are proposed to be amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart J of Part 404 continues to read as follows:

Authority: Secs. 201(j), 205 (a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), and 1302; sec. 5 of Pub. L. 97–455, 96 Stat. 2500; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

2. New § 404.984 is added to read as follows:

§ 404.984 Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) We will apply a United States Court of Appeals decision which we determine conflicts with our interpretation of a provision of the Social Security Act or regulations unless the government appeals or we relitigate the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. We will apply the decision to claims at all levels of administrative adjudication within the applicable circuit unless the decision, by its nature, applies only at certain levels of adjudication.

(b) When we determine that a United States Court of Appeals decision conflicts with our interpretation of a provision of the Social Security Act or regulations and the government does not appeal or appeals unsuccessfully, we will issue a Social Security Acquiescence Ruling that describes the case, identifies the issue(s) involved, and explains how we will apply the decision including, as necessary, how the decision relates to other decisions within the applicable circuit. These rulings will generally be effective on the date of publication in the **Federal Register**. If we make a determination or decision after the date of a circuit court decision, but before we issue an Acquiescence Ruling, and after the publication of the ruling a claimant requests application of the ruling to the prior determination or decision and can demonstrate that application of the ruling could change the prior determination or decision, we will readjudicate the claim at the level at which it was last adjudicated, in accordance with the ruling. Any readjudication will be limited to consideration of the issue(s) covered by the ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. Our conclusion not to readjudicate will not be subject to further administrative or judicial review.

(c) After we have published a Social Security Acquiescence Ruling to reflect a decision of a United States Court of Appeals on an issue, we may decide under certain conditions to relitigate that issue within the same circuit. We will relitigate only when the conditions specified in paragraphs (c) (2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this section, occurs.

(1) *Activating events.* (i) An action by both Houses of Congress indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law; or

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again; or

(iii) Subsequent circuit court precedent in other circuits supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court decision upon which we base a Social Security Acquiescence Ruling.

(2) The General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concurs that relitigation of an issue and application of our interpretation of the Social Security Act or regulations at the administrative level within the circuit would be appropriate.

(3) We publish a notice in the **Federal Register** that we intend to relitigate an Acquiescence Ruling issue and that we will apply our interpretation of the Social Security Act or regulations at the administrative level within the circuit. The notice will explain why we made this decision.

(d) When we decide to relitigate an issue, we will provide a notice explaining our action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply our interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, we will maintain a listing of all claimants who receive this notice.

(e) We will rescind as obsolete a Social Security Acquiescence Ruling and apply our interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occurs:

(1) The Supreme Court overrules or limits a circuit court decision on an issue that was the basis of an Acquiescence Ruling; or

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling; or

(3) A Federal law is enacted that removes the basis for the decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) We subsequently clarify, modify or revoke the regulation or ruling that was the subject of a circuit court decision that we determine conflicts with our interpretation of the Social Security Act or regulations, or we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue(s) was the subject of a circuit court decision that conflicts with our interpretation of the Social Security Act or regulations and that decision is not one which is compelled by the statute or Constitution.

PART 410—[AMENDED]

3. The authority citation for Subpart F of Part 410 is revised to read as follows:

Authority: Secs. 413(b), 426(a), 507, and 508 of the Federal Mine Safety and Health Act of 1977; 30 U.S.C. 923(b), 936(a), 956, and 957.

4. New § 410.670c is added to read as follows:

§ 410.670c Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) The Administration will apply a United States Court of Appeals decision which it determines conflicts with its interpretation of a provision of the Social Security Act or regulations unless the government appeals or the Administration relitigates the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. The Administration will apply the decision to claims at all levels of administrative adjudication within the applicable circuit unless the decision, by its nature, applies only at certain levels of adjudication.

(b) When the Administration determines that a United States Court of Appeals decision conflicts with the Administration's interpretation of a provision of the Social Security Act or regulations and the government does not appeal or appeals unsuccessfully, the Administration will issue a Social Security Acquiescence Ruling that describes the case, identifies the issue(s) involved, and explains how the Administration will apply the decision including, as necessary, how the decision relates to other decisions within the applicable circuit. These rulings will generally be effective on the date of publication in the **Federal Register**. If the Administration makes a determination or decision after the date of a circuit court decision, but before it issues an Acquiescence Ruling, and after the publication of the ruling a claimant requests application of the ruling to the prior determination or decision and can demonstrate that application of the ruling could change the prior determination or decision, the Administration will readjudicate the claim at the level at which it was last adjudicated, in accordance with the ruling. Any readjudication will be limited to consideration of the issue(s) covered by the ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. An Administration conclusion not to readjudicate will not be subject to further administrative or judicial review.

(c) After the Administration has published a Social Security Acquiescence Ruling to reflect a decision of a United States Court of Appeals on an issue, the Administration may decide under certain conditions to relitigate that issue within the same circuit. The Administration will relitigate only when the conditions specified in paragraphs (c) (2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this section, occurs.

(1) *Activating events.* (i) An action by both Houses of Congress indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law; or

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again; or

(iii) Subsequent circuit court precedent in other circuits supports the Administration's interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court decision upon which the Administration bases a Social Security Acquiescence Ruling.

(2) The General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concurs that relitigation of an issue and application of the Administration's interpretation of the Social Security Act or regulations to a claim or a small number of claims within the circuit would be appropriate.

(3) The Administration publishes a notice in the **Federal Register** that it intends to relitigate an issue, and that it will apply its interpretation of the Social Security Act or regulations at the administrative level within the circuit. The notice will explain why the Administration made this decision.

(d) When the Administration decides to relitigate an issue, it will provide a notice explaining its action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply the Administration's interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, the Administration will maintain a listing of all claimants who receive this notice.

(e) The Administration will rescind as obsolete a Social Security Acquiescence Ruling and apply its interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occur:

(1) The Supreme Court overrules or limits a circuit court decision on an issue that was the basis of an Acquiescence Ruling; or

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling; or

(3) A Federal law is enacted that removes the basis for the decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) The Administration subsequently clarifies, modifies or revokes the regulation or ruling that was the subject of a circuit court decision that the Administration determine conflicts with its interpretation of the Social Security Act or regulations, or it subsequently publishes a new regulation(s) addressing an issue(s) not previously included in its regulations when that issue(s) was the subject of a circuit court decision that conflicts with its interpretation of the Social Security Act or regulations and that decision is not one which is compelled by the statute or Constitution.

PART 416—[AMENDED]

5. The authority citation for Subpart N of Part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

6. New § 416.1484 is added to read as follows:

§ 416.1484 Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) We will apply a United States Court of Appeals decision which we determine conflicts with our interpretation of a provision of the Social Security Act or regulations unless the government appeals or we relitigate the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. We will apply the decision to claims at all levels of administrative adjudication within the applicable circuit unless the decision, by its nature, applies only at certain levels of adjudication.

(b) When we determine that a United States Court of Appeals decision conflicts with our interpretation of a provision of the Social Security Act or regulations and the government does not appeal or appeals unsuccessfully, we will issue a Social Security Acquiescence Ruling that describes the case, identifies the issue(s) involved, and explains how we will apply the decision including, as necessary, how the decision relates to other decisions within the applicable circuit. These rulings will generally be effective on the date of publication in the **Federal Register**. If we make a determination or decision after the date of a circuit court decision, but before we issue an Acquiescence Ruling, and after the publication of the ruling a claimant

requests application of the ruling to the prior determination or decision and can demonstrate that application of the ruling would change the prior determination or decision, we will readjudicate the claim at the level at which it was last adjudicated, in accordance with the ruling. Any readjudication will be limited to consideration of the issue(s) covered by the ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. Our conclusion not to readjudicate will not be subject to further administrative or judicial review.

(c) After we have published a Social Security Acquiescence Ruling to reflect a decision of a United States Court of Appeals on an issue, we may decide under certain conditions to relitigate that issue within the same circuit. We will relitigate only when the conditions specified in paragraphs (c) (2) and (3) of this section, are met, and, in general, one of the events specified in paragraph (c)(1) of this section occurs.

(1) *Activating events.* (i) An action by both Houses of Congress indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law; or

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again; or

(iii) Subsequent circuit court precedent in other circuits supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court decision upon which we base a Social Security Acquiescence Ruling.

(2) The General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concurs that relitigation of an issue and application of our interpretation of the Social Security Act or regulations at the administrative level within the circuit would be appropriate.

(3) We publish a notice in the **Federal Register** that we intend to relitigate an Acquiescence Ruling issue, and that we will apply our interpretation of the Social Security Act or regulations at the administrative level within the circuit. The notice will explain why we made this decision.

(d) When we decide to relitigate an issue, we will provide a notice explaining our action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply the Administration's interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, we will maintain a listing of all claimants who receive this notice.

(e) We will rescind as obsolete a Social Security Acquiescence Ruling and apply our interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occur:

(1) The Supreme Court overrules or limits a circuit court decision on an issue that was the basis of an Acquiescence Ruling; or

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling; or

(3) A Federal law is enacted that removes the basis for the decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) We subsequently clarify, modify or revoke the regulation or ruling that was the subject of circuit court decision that we determine conflicts with our interpretation of the Social Security Act or regulations, or we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue(s) was the subject of a circuit court decision that conflicts with our interpretation of the Social Security Act or regulations and that decision is not one which is compelled by the statute or Constitution.

PART 442—[AMENDED]

7. The authority citation for Subpart E of Part 442 is revised to read as follows:

Authority: Secs. 205, 1102, 1106, and 1871 of the Social Security Act, 42 U.S.C. 405, 1302, 1306, and 1395hh; Section 413(b) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 923(b); 8 U.S.C. 1360; 26 U.S.C. 6103; 5 U.S.C. 552 and 552a.

8. Section 442.406 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 422.406 Publication.

* * * * *

(b) *Publication of rulings.* Although not required pursuant to 5 U.S.C. 552(a)(1) and (a)(2), the following rulings will be published in the **Federal Register** as well as by other forms of publication:

(1) Social Security Rulings are published in the **Federal Register** under the authority of the Commissioner of Social Security and are finding on all components of the Administration. These rulings represent precedent final opinions and orders and statements of policy and interpretations that have been adopted by the Administration.

(2) Social Security Acquiescence Rulings are published in the **Federal Register** under the authority of the Commissioner of Social Security and are binding on all components of the Administration, except with respect to claims subject to the relitigation procedures established in § 404.984 (c) and (d), § 410.610c (c) and (d), and § 416.1484 (c) and (d). For a description of Social Security Acquiescence Rulings, see § 404.984(b), § 410.610c(b) and § 416.1484(b) of this title.

* * * * *

§ 422.408 [Removed]

9. Section 422.408 *Statements of policy and interpretations not published in the Federal Register* is removed.

10. Section 422.410 is amended by adding new paragraph (l) to read as follows:

§ 422.410 Publications for sale.

* * * * *

(l) Social Security Acquiescence Rulings.

11. Section 422. 416 *Availability of Records* is amended by adding an "and" between the words "policy," and "other" and by deleting ", such as Social Security Rulings," in paragraph (a).

10. Section 422.430 is amended by adding a new paragraph (a)(6) to read as follows:

§ 422.430 Materials available at district offices and branch offices.

(a) * * *

(6) Social Security Acquiescence Rulings.

11. Section 422.432 is amended by adding a new paragraph (a)(7) to read as follows:

§ 422.432 Materials in field offices of the Office of Hearings and Appeals.

(a) * * *

(7) Social Security Acquiescence Rulings.

[FR Doc. 8-26620 Filed 11-17-8; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Regarding the International Transportation and Receipt of Monetary Instruments; Correction

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking; Correction.

SUMMARY: This notice corrects a typographical error contained in the Notice of Proposed Rulemaking published on November 14, 1988, which proposed a definition of "at one time" for the purposes of the international transportation and receipt of monetary instruments and proposed to amend § 103.11(k), the definition of "monetary instruments," to include all forms of traveler's checks.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566–9947.

In FR Doc. 88–26189, appearing in the Federal Register of Monday, November 14, 1988, on page 45776, amendatory item three is corrected to read as follows:

3. It is proposed to further amend § 103.11 by redesignating paragraphs (l)(1)(ii) through (l)(1)(iv) as (1)(1)(iii) through (1)(1)(v); by removing the words "traveler's checks" from newly redesignated paragraphs (l)(1)(iii) and (l)(1)(iv); and by adding a new paragraph (l)(1)(ii) to read as follows:

§ 103.11 Meaning of Terms.

* * * * *

(l) *Monetary instruments.*

(1) * * *

(ii) Traveler's checks in any form;

* * * * *

Dated: November 14, 1988.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88–26718 Filed 11–17–88; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

38 CFR Part 3

Definitions of Former Prisoner of War

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is proposing to amend its regulation defining former prisoner of war (POW) and establish criteria for deciding such status. The Veterans' Benefits and Service Act of 1988 provides the basis for redefinition. The effect of the change will be to permit the VA to decide POW status for an extended class of veterans.

DATES: Comments must be received on or before December 19, 1988. Comments will be available for public inspection until December 28, 1988. This change is proposed to be effective May 20, 1988, in accordance with law.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this change to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulaitons Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The regulation defining the term "former prisoner of war" is being amended, consistent with recent change of law (38 U.S.C. 101(32)) to set criteria for deciding POW status for a new class of eligible individuals. Before enactment of Pub. L. 100–322, the term POW did not cover individuals interned or detained during a wartime period by a non-enemy government or its agents. Such individuals generally were detained by neutral governments; however, under the recent revision any detainee may be considered for POW status, including even those held by allied governments.

Mere detention does not automatically convey POW staus. While the circumstances of a detention are not pertinent to a decision conveying POW status, the reason for the detention is pertinent.

Previoulsy, the VA had set criteria for deciding POW status for veterans detained during peacetime. These criteria are being adopted for decisions under the expanded authority granted to recognize POW status for individuals detained during wartime by a non-enemy government or its agents.

The criteria require that for a favorable decision, i.e., one which grants POW status, the reason for a detention must have been signficantly to foster anti-American goals or to embarrass the United States.

The Administrator hereby certifies that this proposed regulatory amendment will not have significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. The reason for this certification is thast this proposed amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibiity analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that this proposed regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers for this amendment are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 1, 1988.

Thomas K. Turnage,

Administrator.

In 38 CFR Part 3, Adjudication, § 3.1 is amended by revising paragraph (y) to read as follows:

§ 3.1 Definitions.

* * * * *

(y) *"Former prisoner of war."* The term "former prisoner of war" means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in the line of duty by an enemy or foreign government, the agents of either, or a hostile force.

(1) *Decisions based on service department findings.* The Veterans Administration shall accept the finding of the appropriate service department that a person was a prisoner of war during a period of war unless a reasonable basis exists for questioning it. Such findings shall be accepted only when detention or internment is by an enemy government or its agents.

(2) *Criteria.* The Veterans Administration shall use the following factors to determine prisoner of war status.

(i) *Reasons for forcible detainment or internment.* To be considered a former prisoner of war, a serviceperson shall have been forcibly detained or interned by an enemy or foreign government, the agents of either, or a hostile force, primarily to further or enhance anti-American military, political or economic objectives or views, or to embarrass the United States. A serviceperson who is detained or interned by a foreign government for an alleged violation of its laws is not entitled to be considered a former POW based on that period of detention or internment, unless the charges are a sham intended to legitimize anti-American military, political or economic objectives or views, or actions embarrassing to the United States.

(ii) *Treatment during detainment or internment.* The manner in which a serviceperson is treated during detainment or internment is immaterial in determining whether a serviceperson was a POW.

(iii) *In line of duty.* The Veterans Administration shall consider that a serviceperson was forcibly detained or interned in line of duty unless the evidence of record discloses that forcible detainment or internment was proximately caused by the serviceperson's willful misconduct. Willful misconduct means an act involving conscious wrongdoing or known prohibited action. It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.

(iv) *Hostile force.* The term "hostile force" means any entity other than an enemy of foreign government or the agents of either whose actions are taken to further or enhance anti-American military, political or economic objectives or views, or to attempt to embarrass the United States.

(v) *Determinations of POW status.* The Director of the Compensation and Pension Service, VA Central Office, shall approve all VA regional office determinations, except those accepted under paragraph (y)(1) of this section, either establishing or denying POW status.

(Authority: 38 U.S.C. 101(32))

* * * * *

[FR Doc. 88-26697 Filed 11-17-88; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 3

Basic Eligibility Determinations: Education

AGENCY: Veterans Administration.

ACTION: Proposed Regulation.

SUMMARY: The Veterans Administration (VA) is amending the regulation which provides authority and guidelines for making a service-connected discharge determination needed to determine eligibility for educational assistance under the Vietnam Era GI Bill and the Post-Vietnam Era Veterans Educational Assistance Program (VEAP). The amended regulation adds a rule for deciding when such a determination must be made for a veteran who has applied for benefits under the Montgomery GI Bill-Active Duty.

DATES: Comments must be received on or before December 19, 1988. Comments will be available for public inspection until December 28, 1988.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until December 28, 1988.

FOR FURTHER INFORMATION CONTACT: William Susling, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2668.

SUPPLEMENTARY INFORMATION: The Montgomery GI Bill-Active Duty contains minimum periods of active duty and minimum periods of service in the Selected Reserve which a veteran must serve in order to maintain eligibility for educational assistance following discharge from active duty or discharge from the Selected Reserve. The length of the minimum period of active duty and minimum periods of service in the Selected Reserve varies according to the circumstances of the veteran's enlistment. It also provides two different monthly rates of full-time basic educational assistance. Maintaining eligibility for the higher of these two rates following discharge from the Selected Reserve sometimes requires that the veteran has served a minimum period of time in the Selected Reserve.

The law provides some exceptions to the requirements for a minimum period of active duty or a minimum period of service in the Selected Reserve. One of these exceptions is for veterans who are discharged for a service-connected disability. This amendment to § 3.315(c) provides authority for making disability discharge determinations needed to determine eligibility for benefits under the Montgomery GI Bill-Active Duty.

The VA has determined that this proposed regulation does not contain a major rule as that term is defined by Executive Order 12291, entitle Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-602. Pursuant to 5 U.S.C. 605(b), the proposed regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entitites, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed regulation is 64.124.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: October 31, 1988.

Thomas K. Turnage,

Administrator.

PART 3—[AMENDED]

In 38 CFR Part 3, Adjudication, § 3.315 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.315 Basic eligibility determinations-dependents, loans, education

* * * * *

(c) *Veterans' educational assistance:* (1) A determination is required as to whether a veteran was discharged or released from service because of a

service-connected disability (or that the official service department records show that the veteran had at time of separation from service a service-connected disability which in medical judgment would have warranted discharge for disability) whenever a veteran applies for educational benefits under—

(i) 38 U.S.C. Chapter 32 or Chapter 34 and is eligible for such benefits except for the 181 days active duty requirement; or

(ii) 38 U.S.C. Chapter 30 when any of the following circumstances exist.

(A) The veteran is eligible for basic educational assistance except for the minimum length of active duty service requirements of § 21.7042(a) or § 21.7044(a) of this chapter.

(B) The veteran is eligible for basic educational assistance except for the minimum length of service in the Selected Reserve requirements of § 21.7042(b) or § 21.7044(b) of this chapter.

(C) The veteran is eligible for basic educational assistance and except for the minimum length of service in the Selected Reserve requirements of § 21.7042(b) or § 21.7044(b) of this chapter is entitled to receive that assistance at the monthly rates states in § 21.7136(a) or § 21.7137(a) of this chapter.

(2) This determination is subject to the presumptions of incurrence under § 3.304(b) and aggravation under §§ 3.306 (a) and (c) of this part, based on service rendered after January 3, 1955, and before August 5, 1964, or after May 7, 1975, and § 3.306(b) of this part based on service rendered during the Vietnam era.

(Authority: 38 U.S.C. 1411(a)(1)(A)(ii); 1412(b)(1); 1602(1)(A); 1652(a))

* * * * *

[FR Doc. 88-26698 Filed 11-17-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3478-3]

Approval and Promulgation of Implementation Plans; Ohio

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

ACTION: Extension of the Public Comment Period.

SUMMARY: On September 7, 1988 (53 FR 34557), the U.S. Environmental Protection Agency (USEPA) proposed to disapprove the State of Ohio's request to redesignate the air quality status of Montgomery County, Ohio to attainment for Total Suspended Particulates (TSP).

At the time of the proposed rulemaking, a 30-day comment period was provided. The Ohio Regional Air Pollution Control Agency requested a 45-day extension of the public comment period. Based upon this request, USEPA is extending the public comment period for an additional 45 days to November 23, 1988.

DATE: Comments must be postmarked on or before November 23, 1988.

ADDRESS: If possible please send an original and three copies of all comments. Comments should be submitted to: Gary Gulezian, Regulatory Analysis Section (5AR-26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

Authority: 42 U.S.C. 7401-7642.

Dated: November 1, 1988.

David Kee,

Acting Regional Administrator.

[FR Doc. 88-26723 Filed 11-17-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3478-8]

Alternative Emission Control Plan for American Cyanamid Company Fortier Plant, Westwego, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing disapproval of the American Cyanamid Company Fortier Plant Alternative Emission Reduction Plan ("Bubble") as a revision to the Louisiana State Implementation Plan (SIP). The proposed trade would have used emission reduction credits from incineration of the absorber off-gas (AOG) vent at their acrylonitrile plant to avoid controlling thirteen bulk and crude acrylonitrile storage tanks. The thirteen tanks have since been controlled by State order. EPA determined that incineration of the AOG vent stream was already required under current EPA-approved State Regulations and that the emission reduction used for credit in the trade does not qualify as surplus under the present SIP. Hence, the bubble does not meet the requirements of EPA's proposed Emissions Trading Policy Statement (ETPS) of April 7, 1982 [47 FR 15076], and the basic direction of the final ETPS. A relaxation of the SIP to create surplus emission reductions for the trade is not justifiable based on current air quality.

DATE: Comments must be received at the Region 6 office by December 19, 1988.

ADDRESSES: Copies of the State's submittals are available for review during normal business hours at the following locations:

Air Quality Division, Louisiana Department of Environmental Quality, Land and Natural Resources Bldg., 625 N. 4th St., Box 44066, Baton Rouge, Louisiana 70804

Environmental Protection Agency, Region 6, Air Programs Branch, 1201 Elm St., Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Bill Riddle, State Implementation Plan Section, Air Programs Branch, Air, Pesticides & Toxics Division, EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202, (214) 655-7214.

SUPPLEMENTARY INFORMATION: On July 22, 1982 the Governor of Louisiana submitted a request to revise the Louisiana SIP to include an Alternative Emission Reduction Plan ("Bubble") for the American Cyanamid Company Fortier Plant located at Westwego, Jefferson Parish. The submittal contained certification of adequate notice and a public hearing for the proposed alternate controls. Additional information necessary for review of the proposal was submitted March 3, 1983 and February 21, 1984, by the Air Quality Division of the Louisiana Department of Environmental Quality, and the bubble was revised on March 3, 1983 and again on October 19, 1984. EPA is proposing to disapprove the trade and invites comments from all interested persons. Comments received by the Region 6 office within 30 days of the publication of this notice will be considered by EPA.

Background

American Cyanamid's Fortier Plant proposed to use emission reduction credit from the incineration of the acrylonitrile plant absorber off-gas (AOG) vent to indefinitely delay controlling the emissions from thirteen crude and bulk acrylonitrile fixed roof storage tanks. The tanks were not equipped with any of the emission control devices required by Louisiana Air Quality Regulation (LAQR) 22.3. As a negotiated RACT level of emissions

agreed upon by the company and the State, the State would allow the AOG vent to have baseline emissions of 3960 tons per year (TPY) of volatile organic compounds (VOC). Since actual emissions after incineration are estimated to be 1500 TPY the State would allow a creditable emission reduction of 2460 TPY of VOC.

To compensate for the increased allowable emissions of 108 TPY at the thirteen storage tanks, the State proposes to use 150 TPY of American Cyanamid's available 2460 TPY of credit. This would amount to a 42 TPY net air quality benefit. The entire American Cyanamid trade is summarized below:

State Position—Credit from AOG vent incineration −(2460 TPY) + Increased emissions allowed at storage tanks (108 TPY) + Net air quality benefit (42 TPY) = Credit Balance −(2310 TPY)

EPA Position—0 TPY + 108 TPY + 42 TPY = +150 TPY

Sources	Emissions (tons/year)						
	Actual			Allowable			
	Before bubble	After bubble	Change	Before bubble	After bubble	State position change	EPA position change
Absorber off gas (State position)	13,200	#1500		*3960	#1500	−2460	
Absorber off gas (EPA position)	13,200	#1500		#1500	#1500		0
Storage Tank Emission	120	120		12	120	+108	+108
Air Quality benefit						+42	+42
Total						−2310	+150

* Negotiated RACT level of emissions between Company and State based on 70% control of the AOG vent. The currently applicable regulation, however, is an equipment standard for incineration. Control efficiencies for incineration of AOG vent streams commonly range as high as 99%, and the level of removal evidenced by American Cyanamid in this instance is within the expected range for a normal incinerator under normal operation. Hence, in the absence of any evidence from the State that extra steps were undertaken to enhance the control effectivness of the incinerator, or that a 70% reduction reflects the actual level of control envisioned for the AOG vent stream by the State and EPA when the incinerator requirement was adopted and approved into the SIP, EPA has concluded that substitution of the current incineration requirement with a 70% reduction requirement would constitute a relaxation of the SIP. This is the point upon which EPA bases its disapproval recommendation.

Estimated emissions after incineration.

The current air quality designation is still nonattainment for ozone. Although EPA proposed to call for a new SIP for the area in 1983 based on air quality violations through 1982, since no violations were recorded in 1983, EPA withheld final action on that SIP call. The last five years of data for the three parishes (Jefferson, Orleans, and St. Bernard) in the New Orleans urban nonattainment area is as follows:

Year	NAAQS (ppm)	Highest exceedance (ppm)	Number of exceedances for that year
1983	.12	NA	0
1984	.12	.130	[1] 2
1985	.12	NA	0
1986	.12	NA	0
1987	.12	.137	1

[1] Different sites.

The New Orleans urban nonattainment area has had less than one exceedance per year average over the 1985–1987 time period. EPA is monitoring the air quality situation further before making any decision to call for a revised SIP. The State has not requested that the area be redesignated from nonattainment.

Review

Ths Bubble qualifies as a "pending bubble" under EPA's final Emissions Trading Policy Statement (ETPS) and Technical Issues Document published in the **Federal Register** of December 4, 1986 [51 FR 43814]. It was accordingly reviewed from compliance with the requirements of section 110 of the Clean Air Act, 40 CFR Part 51, EPA's proposed ETPS and Technical Issues Document published in the **Federal Register** on April 7, 1982 [47 FR 15076], and the pending bubble provisions of the final ETPS. EPA has reviewed the State submittal and developed an Evaluation Report.[1] This report is available for inspection by interested parties during normal business hours at the EPA Region 6 office and at the Louisiana Air Qaulity Division office in Baton Rouge. Briefly, the most significant portion of the review are summarized below.

The ETPS requires that emission reductions relied on for credit be surplus–i.e., reductions beyond the appropriate baseline level of emissions for the unit in question. At a minimum, only emission reductions not required by current regulations in the SIP, not already relied on for SIP planning purposes, and not used by the source to meet any other regulatory requirement, can be considered surplus. The appropriate baseline depends on, among other things, the attainment designation and SIP approval status of the area in which the affected unit is located. Jefferson Parish is part of a designated urban ozone nonattainment area. EPA approved the explanation in the SIP that showed how the area would attain the ozone national ambient air quality standard by December 31, 1982 (referred to as the demonstration of attainment) on February 14, 1980 [45 FR 9903]. Because the area continued to experience violations of the ozone standard through 1982, EPA proposed on February 3, 1983 to find the New Orleans SIP to be deficient and call for a revised SIP under section 110(a)(2)(H) of the Clean Air Act. No violations were recorded in 1983, however, and EPA withheld final action on the SIP call. Two exceedances of the standard in 1984 and one in 1987, indicate a continuing air quality problem which may not have been fully corrected by the approved SIP. EPA is monitoring the air quality situation further before making any decision on a call for a revised SIP.

The Louisiana Air Quality Regulation (LAQR) 22.8 was approved by EPA as part of the SIP and requires the application of reasonably available control technology (RACT) on VOC waste gas disposal. This regulation requires that nonhalogenated hydrocarbons like those in the AOG vent stream be burned at 1300°F (740 °C) for 0.3 second or greater in a direct flame afterburner or an equally effective device.

The AOG vent had uncontrolled emissions in 1980 of 13,200 tons per year (TPY) of VOC. An incinerator was

[1] Evaluation Report for Alternative Emission Control Plan for American Cyanamid Company, Westwego, Louisiana, EPA-Region 6, December 1986.

installed in 1981, and now the total emissions after control are estimated by the State at 1,500 TPY. It is EPA's position that incineration of the vent stream was required by the SIP. Since incineration is the method of control being employed, and in the absence of evidence to demonstrate that any steps have been taken to enhance the control effectiveness of the incinerator beyond minimum legal requirements, and in the absence of underlying documentation to show that a level of control as low as 70% was envisoned by the State and EPA when the incineration regulation was initially adopted and approved into the SIP, EPA has concluded that no surplus credits have been created.

The state claims that incineration for the AOG vent was waived under LAQR 22.8(c) and that 70 percent control is all that is required. At 70 percent control, allowable emissions from the vent would be 3960 TPY. By this reasoning, American Cyanamid would have 2460 TPY of emission reduction credits (3960 minus 1500), much more than needed to balance the emissions increase that the bubble would allow from the tanks. The basis for this claim is the approximately 70 percent facility-wide emission reduction expected from American Cyanamid in the 1979 SIP demonstration of attainment for New Orleans. That demonstration, however, does not contain enforceable emissions limits for any individual pieces of equipment. The demonstration was intended only to show that, by application of the State's control requirements, the NAAQS for ozone would be attained in New Orleans by December 31, 1982. The enforceable means of actually achieving those reductions are the Louisiana Air Quality Regulations. The requirement for the AOG vent is therefore an equipment standard, i.e., incineration, not the approximately 70 percent rollback expected for the facility as a whole in the attainment demonstration. In order to subsitute an emission limit (70 percent reduction) for an equipment standard, (incineration), a SIP revision based on a new permit or other legally enforceable instrument incorporating that limit would be required. The State maintains this is not necessary because the incineration requirement was waived by the Assistant Secretary of the Louisiana Environmental Control Commission under LAQR 22.8(c). This waiver clause reads as follows:

"Where it can be demonstrated to the Department that the waste gas stream:

1. Is not significant (i.e. is less than one hundred TPY),

2. Will not support combustion without auxiliary fuel, or

3. Disposal cannot be practically or safely accomplished by other means without causing economic hardship, the Assistant Secretary may waive the requirement."

A brief history on EPA's approval of this regulation is in order here. On reading the waiver provision when it was submitted by the State for incorporation into the SIP, EPA raised a question as to whether criteria 1 and 2 together, or 1 and 3 together, or instead only one of either 1 or 2 or 3, must be met.

During the period between EPA's proposed approval of § 22.8(c) and its final action on that provision, the Louisiana Environmental Control Commission adopted a resolution stating, among other things, that:

> The correct interpretation and intent of § 22.8(c) by the State is that . . . consideration for exemption by the Assistant Secretary (previously Technical Secretary) is based on a combination of the three conditions stated in § 22.8(c) . . . .

Thus, the State committed to adopting exemptions only for streams that met a combination of the three criteria in § 22.8(c), not just one. Because of "or" is located between criteria 2 and 3, EPA read the Commission's resolution to mean that, at minimum, criterion 1 must always be met, and either criterion 2 or criterion 3 must also be met. When EPA granted final approval to the exemption provision [see 47 FR 6015, 6016], it relied expressly on this LECC resolution:

> The State has submitted a resolution defining its interpretation of the section. Upon consideration of the comments received and the State's resolution, EPA has determined that the exemption clause in § 22.8(c) is appropriate (see Evaluation Report, available at addresses listed in Addresses section). Therefore EPA is granting final approval to § 22.8(c) as submitted by the State.

In the EPA Evaluation Report referenced in this statement, the Agency said:

> The State submitted a resolution defining its interpretation of the Section, which explained that an exemption for an individual waste gas stream is allowed only on a case by case basis and only if a combination of three conditions are met, one being that a stream's emissions must be less than 100 tones per year. Upon consideration of the public comments received and the State's resolution, EPA has determined that the exemption clause in § 22.8(c) is appropriate as submitted by the State.

Thus, it is clear from the LECC resolution and the statements on which EPA's approval of § 22.8(c) was based, that EPA approved that section's waiver provision only to the extent it permitted the State to adopt waivers for sources emitting less than 100 TPY and meeting one or both of the other listed criteria. Any other waivers would be inconsistent with the terms of the resulting EPA-approved SIP and would therefore require a revision of the SIP. Under sections 110(a) and 110(i) of the Clean Air Act, such revisions must receive EPA approval before they change the SIP.

The AOG vent emits well over 100 TPY of VOC, and therefore does not meet the first of the three criteria listed in the § 22.8(c) waiver provision. Hence, under the terms of that provision as it was incorporated into the EPA-approved SIP, the waiver the state adopted for the vent will not change the otherwise applicable incineration requirement unless and until EPA approves the waiver. EPA has not yet approved the waiver as a SIP revision, so the incineration requirement still applies to the vent, and accordingly forms the trading baseline. Since, as discussed above, the vent emission reductions are equivalent to, and not beyond, the baseline, no surplus emission reductions have been created.

Since under EPA emissions trading policy the baseline for the AOG vent is the SIP requirement, EPA would have to approve a relaxation of that requirement before it could approve the bubble the state has submitted. Such a relaxation could be approvable, however, only if either (1) the state were to submit a new demonstration that such a relaxation would not interfere with maintaining the standard, as required by the Clean Air Act, or (2) EPA could conclude, based on the 1979 demonstration and in light of the area's current air quality and the expected ambient effect of the relaxation, that an approximately 30 percent (i.e. from the 70% control to 99% + incinerator control) increase in emissions will not interfere with maintenance. Since the state did not submit a new demonstration, EPA analyzed whether the second of these alternatives has been satisfied.

As noted above, the 1979 demonstration lists emission reduction projections for the area's sources. However, even though most of those reductions have already been achieved, and even though, through incineration of the AOG vent, the American Cyanamid facility has achieved more than the approximately 70 percent reduction projected in the demonstration, air quality monitoring shows that the area still experiences marginal nonattainment. A relaxation of the AOG vent requirement from incineration to only 70 percent control would provide American Cyanamid authority

potentially to increase actual emissions by as much as 2,310 TPY of VOC through a series of bubbles involving other emissions units in the three-parish New Orleans urban nonattainment area. This would amount to approximately 10 percent of the total 1982 emissions projected for all point sources in the area. EPA believes that an increase of this magnitude would have a significant negative impact on ozone concentrations and hence on the area's ability to maintain the ozone standard.[2] For this reason, and because the state has presented no evidence that the greater emissions reduction resulting from incineration is not RACT, EPA cannot rely on the 1979 demonstration to conclude that a relaxation of the incineration requirement to a 70 percent control requirement would not interfere with maintenance of the standard.

The submittal may also contain other deficiencies not noted. This notice does not discuss these deficiencies because the submission does not meet the fundamental baseline requirements discussed previously, which in themselves provide enough reason to disapprove the action. To determine the applicable requirements and ascertain how this action may be rewritten as an approvable emission trade, the applicant or State agency should consult the Emissions Trading policy of December 4, 1986 (51 FR 43814), Appendix D of the proposed Ozone/Carbon Monoxide Nonattainment policy of November 24, 1987 (52 FR 45105), and the enforceability checklist included in a September 23, 1987, memorandum from J. Craig Potter, Thomas L. Adams Jr., and Francis S. Blake re: "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency."

In sum, because (1) the emissions reductions relied on for this bubble is not surplus under the current EPA-approved SIP, and (2) it has not been demonstrated the the SIP incineration requirement can be relaxed to create a surplus reduction based on the 1979 demonstration without jeopardizing maintenance of the ozone standard in the New Orleans area, EPA must disapprove this trade.

Interested parties are invited to submit comments on this proposed disapproval. EPA will consider all comments received within thirty days of the publication of this notice.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certifies that this proposed disapproval will not have a significant impact on a substantial number of small entities because it applies only to one firm, American Cyanamid Company.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

This notice of disapproval is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Editorial note.—This document was received at the Office of the Federal Register November 15, 1988.

Dated: Mar. 3, 1987.

Robert E. Layton Jr.,

Regional Administrator (6a).

[FR Doc. 88–26722 Filed 11–17–88; 8:45 am]

BILLING CODE 6560-50-M

[2] Pending the results of further monitoring in the area, EPA has not yet decided whether the current SIP requirements are "substantially inadequate" to maintain the ozone standard within the meaning of Section 110(a)(2)(H) of the Act. For the reasons discussed above, however, EPA can conclude now that while the current SIP may be found adequate, a relaxation of the SIP to allow the greater emissions assumed in the 1979 demonstration may not protect the standard.

Notices

Federal Register
Vol. 53, No. 223
Friday, November 18, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agricultural Commodities To Be Made Available for Donation Overseas in Fiscal Year 1989

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This Notice sets forth the determination of the Secretary of Agriculture of the types and quantities of agricultural commodities to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1989.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 447–3573.

SUPPLEMENTARY INFORMATION: Section 416(b) of the Agricultural Act of 1949, as amended, 7 U.S.C. 1431(b) ("section 416(b)"), requires the Secretary of Agriculture to make available for donation overseas for each of the fiscal years 1986–1990 not less than certain minimum quantities of Commodity Credit Corporation ("CCC") uncommitted stocks. The minimum quantity of grains (wheat, rice, and feed grains) and oilseeds required to be made available shall be the lesser of 500,000 metric tons of CCC's uncommitted stocks or 10 percent of the estimated year-end levels of CCC's uncommitted stocks. The minimum quantity of dairy products shall be 10 percent of CCC's uncommitted stocks of dairy products, but not less than 150,000 metric tons to the extent that uncommitted stocks are available. The minimum quantity requirements may be waived by the Secretary if the Secretary determines and reports to Congress there are insufficient valid requests for eligible commodities under section 416(b) for any fiscal year, or if the Secretary determines the restrictions in furnishing of commodities under section 416(b)(3) prevent the making available of commodities in such quantities.

Section 416(b) also requires the Secretary to estimate the expected year-end levels of CCC's uncommitted stocks of grains and oilseeds, and dairy products for each of the fiscal years 1986–1990.

The Secretary is required to publish in the **Federal Register** his determination of the quantities of commodities that shall be made available for each fiscal year along with a breakdown by kind of commodity and the quantity of each commodity.

Determination

In accordance with section 416(b), I have determined that 900,000 metric tons of grains and 4,500 metric tons of butter (frozen form only) shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1989.

The kinds of quantities of commodities that shall be made available for donation are as follows:

Commodity	Quanity (Metric tons)
Grains and Oilseeds:	
Corn	400,000
Sorghum	500,000
Total	900,000
Dairy Products:	
Butter (frozen form only)	4,500
Total	4,500

Done at Washington, DC, this 24th day of October 1988.

Peter C. Myers,

Acting Secretary.

[FR Doc. 88–26717 Filed 11–17–88; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Douglas-Fir Tussock Moth Management, Lossen National Forest, Plumas, Tehama and Lassen Counties, CA and Plumas National Forest, Sierra, Lassen and Plumas Counties, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for the Douglas-fir tussock moth outbreak on approximately 100,000 acres of the Lassen and Plumas National Forests.

A range of alternatives for this project will be considered. One of these will be not to do anything. Other alternatives will consider aerial application of synthetic insecticides or biological control agent.

Federal, State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Forest Supervisors will hold the following public meetings: Chester, California on November 30 at the Civic Center; Quincy, California on November 29 at the Plumas County Library; Greenville, California on December 1 at the Elementary School Library; La Porte, California on November 22 at the Union Hotel; Graeagle, California on November 21 at thee Graeagle Community Hall. All meetings will begin at 7:00 p.m.

Paul Barker, Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

The analysis is expected to take about 2 months. The draft environmental impact statement is scheduled to be completed by January 1988.

Written comments and suggestions concerning the analysis should be sent to Laurence Crabtree, District Silviculturist, Box 767, Almanor Ranger District, Chester, California 96020 by December 15, 1988.

Questions about the proposed action and the environmental impact statement should be directed to Laurence Crabtree at the above address or phone 916–258–2141.

D. Keith Crummer,

Almanor District Ranger.

Date: November 14, 1988.

[FR Doc. 88–26714 Filed 11–17–88; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Oglethorpe Power Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact relating to the construction of a 230 kV transmission line in Richmond County, Georgia.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to construction of a 4.2 mile, 230 kV transmission line on single steel support structures. Oglethorpe Power Corporation (OPC), of Tucker, Georgia, has requested approval to use general funds to construct the project.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area-Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8436.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that OPC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate assessment of the environmental impacts of the proposed project. The project will allow OPC to continue to meet its responsibilities to serve its load in a reliable and economical manner.

The length of the proposed transmission line is approximately 4.2 miles. It will be connected to the end of the existing 230 kV Boykin Road Transmission Line and terminate at the existing 230/115/46 kV Goshen Substation. The line will require new right-of-way (ROW) 65 feet in width.

REA has concluded that the proposed project will have no significant impact on wetlands, prime farmland, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, air quality, water quality and the health of humans or animals. Floodplains, wetlands, and prime farmland are located in the preferred line ROW. Some transmission line support structures may be located within these areas; however, REA believes that transmission line structure placement will have no significant impact to these areas. No practical alternative routes that could avoid these areas were identified. Certain other impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegetation for the right-of-way clearing and the aesthetic impact on the visual quality of the area.

Alternatives examined for the proposed project included no action, electrical alternatives, and alternative line routes. REA determined that there is a demonstrated need for the project and constructing it within the preferred ROW will have no significant impact to the environment. Therefore, REA has concluded that its approval to allow OPC to use general funds to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. REA has reached a FONSI with respect to the proposed project.

Copies of the EA and FONSI can be obtained from the offices of REA in the South Agriculture Buildings, Room 0270, 14th and Independence Avenue SW., Washington, DC 20250 or at the office of Oglethorpe Power Corporation, P.O. Box 1349, Tucker, Georgia 30085–1349.

In accordance with REA Environmental Policies and Procedures, 7 CFR 1794, OPC has a notice and advertisement published in *The Agusta Herald* which has a general circulation in Richmond County. The notice appeared in the October 7, 1988 issue. The notice described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by OPC or REA.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.8509–Rural Electrification Loans and Loan Guarantees. In accordance with 7 CFR Part 3015, Subpart V, and its related **Federal Register** notice (48 FR 29115), this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Date: November 15, 1988.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 88–26754 Filed 11–17–88; 8:45 am]

BILLING CODE 3410–15–M

Seminole Electric Cooperative, Inc.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to prepare environmental impact statement and hold scoping meetings.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794) plans to act as lead agency and prepare a Draft (DEIS) and subsequently a Final Environmental Impact Statement (FEIS) for its Federal action related to a proposal by Seminole Electric Cooperative, Inc. (Seminole) of Tampa, Florida, to construct a 440 MW electric generating station. REA may consider providing financing assistance, construction approval, and/or approval of contractual agreements between Seminole and other parties to allow project construction. Notice is also given of public scoping meetings to be held in conjunction with the review of the possible environmental consequences and the determination of potentially significant environmental issues associated with the REA, U.S. Environmental Protection Agency (EPA), and Federal Energy Regulatory Commission's (FERC) Federal action related to the proposed project.

EPA is planning to act as a cooperating agency in the preparation of the DEIS and FEIS for the proposed project. EPA's Federal action related to the project will be the possible issuance of a new source National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits regulate the discharge of pollutants to the waters of the United States.

FERC is also planning to act as a cooperating agency in the preparation of the DEIS and FEIS for its possible Federal action related to issuance of a Certificate of Convenience and Necessity for an interconnection to a gas pipeline associated with the proposed project.

FOR FURTHER INFORMATION CONTACT: The primary point of contact for this

project is Mr. Alex M. Cockey, Jr., Director, Southeast Area—Electric, Rural Electrification Administration, room number 0270, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–1500, telephone number (202) 382–8436. For more information on the NPDES permit, contact Mr. Robert Howard, Chief, NEPA Compliance Branch, EPA, Region IV, 345 Courtland Street, Atlanta, Georgia 30365, telephone (404) 347–7109. For information on the Certificate of Convenience and Necessity, contact Mr. Richard Hoffman, Chief, Environmental Analysis Review Branch, Federal Energy Regulatory Commission, 825 North Capital Street, Washington, DC 20246, telephone (202) 357–9066. For information on specific aspects of Seminole's proposal, contact Mr. Michael Opalinski, Manager of Environmental Affairs, Seminole Electric Cooperative, Inc., P.O. Box 272000, Tampa, Florida 33688–2000, telephone number (813) 963–0994.

SUMMARY INFORMATION: Seminole tentatively proposes that the generating facilities be located in the State of Florida and is investigating sites in Hardee, Polk, and Sumter Counties and has a plan of study for a macro-corrider analysis containing alternative routes in Polk, Hardee, De Soto, Charlotte, and Lee Counties where a transmission line associated with the station may be located. The area being considered for generating facilities in Hardee and Polk counties is made up of a large area at the junction of both counties controlled by the phosphate mining industry and previously impacted by mining operations. The area being considered in Sumter County is in the vicinity of Sumterville. The sites are being investigated for a 440 MW combined cycle electric generating station with capability for expansion to ultimately support 660 MW of generating capacity. The station would be primarily fired with natural gas with a fuel oil backup. The site will be evaluated as a potential location for an on-site gasification plant that may be considered at a future date. Associated with the proposed generating station will be two fuel oil storage tanks, a 30 mile natural gas supply pipeline, a mechanical draft cooling tower or a 575 acre cooling reservoir, an administration building and approximately 85 miles of 230 KV transmission line.

Alternatives to be considered by REA and Seminole may include, among other options: (a) no action, (b) conservation measures, (c) purchase power from other sources, (d) shared generating units with other utilities, (e) construction of generation facilities by an independent power producer for the purpose of selling power to Seminole, (f) alternative sites for the proposed plant and alternative routes for the associated transmission line or lines, (g) alternative fuels, and (h) alternative methods of generation.

Public scoping meetings will be held at The American Legion Building, 25 West Palmetto Street, Wauchula, Florida 33873 on Tuesday, December 20, 1988 at 7:00 p.m. and at the Best Western Robert E. Lee Motor Inn, 6611 North U.S. 41, North Fort Myers, Florida 33903 on Wednesday, December 21, 1988 at 7:00 p.m.

Comments regarding the proposed project may be submitted orally or in writing at the scoping meetings or within 30 days after the December 21 meeting to REA at the address provided in this notice.

Government agencies, other organizations, and the public are invited to participate in the planning and anaylsis of the proposed project. Issues to be discussed at the scoping meetings include, but are not limited to, determination of the project scope, the nature and extent of reasonable alternatives, identification of significant environmental issues and the scope of those issues, delineation of issues which are not significant and do not warrant detailed study, and identification of other environmental reviews, analysis or study requirements that REA or other Federal, State of Florida, or local agencies may require to be conducted concurrently with the Environmental Impact Statement. To be presented at the meeting will be a Siting Study and an Alternative Evaluation Study prepared by Seminole and reviewed by REA. Seminole also intends to present a Plan of Study detailing the scope, quantity and specifically of information to be contained in its Environmental Analysis. The Environmental Analysis will be used as input to the DEIS and the FEIS. The Siting Study Alternative Evaluation and Plan of Study are available for public review at REA or Seminole at the address provided herein. They can also be reviewed at the following libraries:

Bartow Public Library, 315 E. Parker Street, Bartow, Florida 33830.

Charlotte-Glades, Library System, 18400 Murdock Circle, Port Charlotte, Florida 33948.

Hardee County Library, 315 N. 6th Avenue, Suite 114, Wauchula, Florida 33837.

De Soto County Library, 519 Hickory Street, Arcadia, Florida 33821.

Lee County/Fort Myers, Public Library, 2050 Lee Street, Ft. Myers, Florida 33901.

Any final action by REA, EPA, or FERC related to the proposed project will be subject to and contingent upon compliance with all relevant Federal environmental laws and regulations and completion of the environmental procedures as prescribed by CEQ, REA environmental policies and procedures and those of EPA and FERC, as applicable.

John H. Arnesen,

Assistant Administrtor-Electric.

Date: November 15, 1988.

[FR Doc. 88–26755 Filed 11–17–88; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

Subcommittee on Export Administration of the President's Export Council; Closed Meeting

A closed meeting of the President's Export Council Subcommittee on Export Administration will be held December 14, 1988, 9 a.m. to 3 p.m., U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue, NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Executive Session: 9:00 a.m.—3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 27, 1987, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Subcommittee, dealing with the classified materials listed in 5 U.S.C. 552b (c) (1) shall be exempt from the provisions relating to public meetings found in section 10 (a) (1) and (a) (3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the

public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Sharon A. Gongwer (202) 377–3586.

Date: November 14, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–26677 Filed 11–17–88; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Duke University Marine Laboratory (P371A)

On June 8, 1988, notice was published in the **Federal Register** (50 FR 21508) that an application had been filed by the Duke University Marine Laboratory, Pivers Island, Beaufort, North Carolina 28516–9721, for a permit to take up to 300 Atlantic bottlenose dolphins (*Tursiops truncatus*) by harassment for the purposes of scientific research.

Notice is hereby given that on November 4, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Silver Spring Metro Center No. 1, 1335 East-West Highway, Room 7324, Silver Spring, Maryland 20910; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: November 4, 1988.

[FR Doc. 88–26744 Filed 11–17–88; 8:45 am]

BILLING CODE 3510–22–M

National Marine Fisheries Service; Marine Mammals; Application for Permit; Ocean Park Corp. (43C)

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:* Ocean Park Corporation, Wong Chuk Hang Road, Aberdeen, Hong Kong.

2. *Type of Permit:* Public display.

3. *Name and Number of Marine Mammals:*

Harbor seals (*Phoca vitulina*), 12.

California sea lions (*Zalophus californianus*), 8.

4. *Type of Take:* Permanent maintenance from captive born stock.

5. *Location and Duration of Activity:* Sea World over a 2 year period.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

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, Washington, DC, 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. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Silver Spring, MD 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

Date: November 11, 1988.

[FR Doc. 88–26745 Filed 11–17–88; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; Ringling Bros.-Barnum and Bailey Circus (P384A)

On September 29, 1988, notice was published in the **Federal Register** (53 FR 38049) that an application had been filed by Ringling Bros.-Barnum and Bailey Circus, Executive Offices, 3201 New Mexico Avenue NW., Washington, DC 20016, to import South American (Patagonian) sea lions (*Otaria flavescens*) for public display.

Notice is hereby given that on November 9, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington, 98115; and

Director, Alaska Region, National Marine Fisheries Services, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: November 9, 1988.

[FR Doc. 88–26746 Filed 11–17–88; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

November 15, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, 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) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limit for Category 659–C is being increased for special carryforward, carryforward and swing.

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 161, published in the **Federal Register** on January 5, 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.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 30, 1987 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 15, 1988, the directive of December 30, 1987 is amended further to increase to 552,202 pounds [1] the current limit for man-made fiber textile products in Category 659–C,[2] as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–26679 Filed 11–15–88; 4:02 pm]

BILLING CODE 3510–01–M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

November 15, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: November 22, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The Governments of the United States and the Federative Republic of Brazil, agreed to establish a new Bilateral Textile Agreement for the period which began on April 1, 1988 and extends through March 31, 1992. The sublimit for Category 410 is being increased only for the first year of the agreement to 3,900,000 square yards, but is still subject to the merged limit for Categories 410/624 negotiated in the agreement.

A copy of the agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

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). For a description in terms of HTS numbers see the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see FRN 53 FR 44937, published on November 7, 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.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 1988

Commissioner of Customs,
Department of the Treasury, Washington, DC. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 15 and 19, 1988, between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on Nov. 22, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Federative Republic of Brazil and exported during the twelve-month period which began on April 1, 1988 and extends through March 31, 1989, in excess of the following levels of restraint:

Category	12-month restraint limit [1]
200–239, 300–369, 400–469 and 600–670, as a group.	325,000,000 square yards equivalent.
Sublevels in the Group	
218	4,000,000 square yards.
219	13,000,000 square yards.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 659–C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

Category	12-month restraint limit [1]
225	7,000,000 square yards.
300/301	10,000,000 pounds.
313	36,800,000 square yards.
314	5,500,000 square yards.
315	16,500,000 square yards.
317/326	15,000,000 square yards.
334/335	90,000 dozen.
336	50,000 dozen.
337	87,000 dozen.
338/339/638/639	900,000 dozen.
342/642	265,000 dozen.
347/348	650,000 dozen.
350	85,000 dozen.
361	680,000 numbers.
363	16,200,000 numbers.
369-D [2]	714,610 pounds.
410/624	8,000,000 square yards of which not more than 3,900,000 square yards shall be in Category 410.
433	16,832 dozen.
445/446	65,939 dozen.
604	700,000 pounds of which not more than 535,000 pounds shall be in Category 604-A.[3]
607	6,500,000 pounds.
647/648	300,000 dozen.
669/P [4]	2,382,032 pounds.

[1] The limits have not been adjusted to account for any imports exported after March 31, 1988.
[2] In Category 369-D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.
[3] In Category 604-A, only TSUSA numbers 310.5049 and 310.6045.
[4] In Category 669-P, only TSUSA number 385.5300.

You are directed to retain the charges already made to the limits establishes in this directive for the foregoing categories. For goods imported during the period April 1, 1988 through August 31, 1988, the following additional amounts shall be charged:

Category	Amounts to be charged
200	3,314 pounds.
219	169,996 square yards.
220	27,450 square yards
224	234,707 square yards.
229	967 pounds.
239	34 pounds.
300	355,126 pounds.
314	2,472 square yards.
317	113,750 square yards.
326	7,590 square yards.
332	1,800 dozen pairs.
334	1,720 dozen.
335	6,454 dozen.
336	86 dozen.
337	220 dozen.
338	654 dozen.
339	86,164 dozen.
340	3,287 dozen.
341	2,606 dozen.
342	5,144 dozen.
345	157 dozen.
347	1,011 dozen.
348	5,344 dozen.
349	52 dozen.
350	700 dozen.
351	529 dozen.
352	10,049 dozen.
359	9,664 pounds.
360	35,000 numbers.
361	20,000 numbers.
363	106,624 numbers.
369-D [1]	10,703 pounds.
369-O [2]	51,408 pounds.
400	20,177 pounds.
410	43,646 square yards.
414	1,120 pounds.
433	50 dozen.
435	1 dozen.
442	1 dozen.
444	8 numbers.
445	75 dozen.
446	100 dozen.
465	1,528 square yards.
600	2,121 pounds.
604-A [3]	466 pounds.
606	27,604 pounds.
607	124,489 pounds.
624	27,809 square yards.
629	521 square yards.
635	2 dozen.
637	195 dozen.
639	1 dozen.
641	9 dozen.
642	3,002 dozen.
648	2,870 dozen.
649	47,610 dozen.
659	119 pounds.
665	519 square feet.
669-P [4]	117,057 pounds.
669	16,704 pounds.
670	318 pounds.

[1] In Category 369-D, only TSUSA numbers 365.6615, 366.1720, 366l.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.
[2] In Category 369-O, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, and 366.2860 in Category 369-D.
[3] In Category 604-A, only TSUSA numbers 310.5049 and 310.6045.
[4] In Category 669-P, only TSUSA number 385.5300.

Imports charged to these category limits for the period January 1, 1988 through March 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The foregoing limtis may be adjusted in the future under provisions of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil.

The square yard equivalent factor for Categories 338/339/638/639 is 12.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-26680 Filed 11-17-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 19, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, November 15, 1988 (53 FR 46018).

Mirror and Bracket Assembly, Rearview, RH—2540-00-575-8391
Bag, Drinking Water Storage—4610-01-117-8271
Sea Marker, Fluorescein Dye—6850-00-270-9986
Table Leg—7110-00-NSH-0023
Binder, Looseleaf, Flight Crew—7510-00-240-6012
Buckle, Belt—8315-01-075-1818

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-26797 Filed 11-17-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1989 commodities to be purchased by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 2 and September 16, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 34140 and 36091) of proposed additions to and deletions from Procurement List 1989, November 15, 1988 (53 FR 46018).

Additions

No comments were received in response to the notice; however, in the early development stage for the writing paper pads, the Committee requested annual sale data from a contractor for one of the pads. That contractor in responding to the request indicated that the inclusion of the pad on the Procurement List would severely impact his firm. The Committee has considered those comments and has determined that the addition to the Procurement List of the writing paper pads does not constitute severe adverse impact on that firm or any other current contractor for the pads being added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1989:

Pad, Writing Paper—7530–01–124–5660 (GSA Regions 9, 10 and New Cumberland Army Depot)
7530–01–131–0091 (GSA Regions 2, 9, 10 and New Cumberland Army Depot)

Deletions

After considertion of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government 41 U.S.C. 46–48c and 41 CFR 51–2.6.

Accordingly the following commodities are hereby deleted from Procurement List 1989:

Mop, Dusting, Cotton—7920–00–245–8289
Mophead, Dusting, Cotton—7920–00–634–0201; 7920–00–267–4921

Beverly L. Milkman,

Executive Director.

[FR Doc. 88–26798 Filed 11–17–88; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On July 29, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 28681) of proposed additions to Procurement List 1989, November 15, 1988 (53 FR 46018).

Comments were received from the current contractor for the long sleeve women's shirts (hereinafter, shirts) as a result of the Committee's notice in the **Federal Register** of proposed addition to the Procurement List. The commenter indicated that this type of shirt is particularly difficult to produce and that compliance with the Government's quality tests is also difficult. The Committee has determined that the workshop is capable of producing the shirts in compliance with the Government's requirements based on the results of workshop inspections. The procuring activity inspected the workshop and reported that it has the technical expertise and resources necessary to manufacture the shirts and its personnel understand the principles and processes necessary for their manufacture. The National Industries for the Severely Handicapped also inspected the workshop and certified that it is capable of producing these shirts in compliance with the Government's specifications. The value of the shirts contract of the current contractor represents approximately 14% of the total annual sales of that firm. This is not considered to be serious adverse impact. A preliminary analysis of impact on the then current contractor led the Committee to request that firm to provide data on its sales. After assessing the data provided by the firm and other comments resulting from the Committee's request, the Committee determined that there was no severe impact on any other entity. After consideration of the material presented to it concerning the capability of a qualified workshop to produce the commodities at a fair market price and impact of the addtion on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the Commodities procured by the Government. Accordingly, the following commodities are hereby added to Procurement List 1989:

Shirt, Woman's

8410–01–104–7947	8410–01–104–7948
8410–01–104–7949	8410–01–104–7950
8410–01–104–7951	8410–01–104–7952
8410–01–104–7953	8410–01–104–7954
8410–01–104–7955	8410–01–104–7956
8410–01–104–7957	8410–01–104–7958
8410–01–104–7959	8410–01–104–7960
8410–01–104–7961	8410–01–104–7962
8410–01–105–2494	8410–01–105–2495
8410–01–105–2496	8410–01–105–2497
8410–01–105–2498	8410–01–105–2499
8410–01–105–2500	8410–01–105–2501
8410–01–105–2502	8410–01–105–2503
8410–01–105–2504	8410–01–105–2505
8410–01–105–2506	8410–01–105–2507

8410-01-105-2508	8410-01-105-2509
8410-01-105-2510	8410-01-105-2511
8410-01-105-2512	8410-01-105-2513
8410-01-105-2514	8410-01-105-2515
8410-01-105-2516	8410-01-105-2517
8410-01-105-2518	8410-01-105-2519
8410-01-105-2520	8410-01-105-2521
8410-01-105-2522	8410-01-105-2523
8410-01-105-2524	8410-01-105-2525
8410-01-105-2526	8410-01-105-2527
8410-01-105-2528	8410-01-105-2529
8410-01-105-2530	8410-01-105-2531
8410-01-105-2532	8410-01-105-2533
8410-01-105-2534	8410-01-105-4713
8410-01-224-6075	8410-01-224-6076
8410-01-224-6077	8410-01-224-6078
8410-01-224-6079	8410-01-224-6080
8410-01-224-6081	8410-01-224-6082
8410-01-224-6083	8410-01-224-6084
8410-01-224-6085	8410-01-224-6086
8410-01-224-6087	8410-01-224-6088
8410-01-224-6089	8410-01-224-6090
8410-01-224-6091	8410-01-224-6092
8410-01-224-6093	8410-01-224-6094
8410-01-224-6095	8410-01-224-6096
8410-01-224-6097	8410-01-224-6098
8410-01-224-6099	8410-01-224-6100
8410-01-224-6101	8410-01-224-6102
8410-01-224-6103	8410-01-224-6104
8410-01-224-6105	8410-01-224-6106
8410-01-224-6107	8410-01-224-6108
8410-01-224-6109	8410-01-224-6110
8410-01-224-6111	8410-01-224-6112
8410-01-224-6113	8410-01-224-6114
8410-01-224-6115	8410-01-224-6116
8410-01-224-6117	8410-01-224-6118
8410-01-224-6119	8410-01-224-6120
8410-01-224-6121	8410-01-224-6122
8410-01-224-6123	8410-01-224-6124
8410-01-224-6125	8410-01-224-6126
8410-01-224-6127	8410-01-224-6128
8410-01-224-6129	8410-01-224-6130
8410-01-224-6131	8410-01-224-6132
8410-01-224-6133	8410-01-224-6134
8410-01-224-6135	8410-01-224-6136
8410-01-224-6137	8410-01-224-6138
8410-01-224-6139	8410-01-224-6140
8410-01-224-6141	8410-01-224-6142

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-26799 Filed 11-17-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

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

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning certification of commercial pricing.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3201, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition and Regulatory Policy, (202) 523-3781, or Mr. Owen Green, Defense Acquisition Regulatory Council, (202) 697-7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

This clearance covers the reporting requirements as required by Pub. L.'s 98-577 and 99-591 on Certificates of Commercial Pricing. The clauses at FR 52.215-32 and 52.215-35 require that offerors/contractors certify to the best of their knowledge and belief that prices offered for those spare or repair parts that the contractor offers for sale to the public are no higher than the lowest commercial sales price at which such parts were sold during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available; provided, that in no event shall this period be less than 30 days induration. All items for which prices offered are higher than the lowest commercial sales price discussed above must be identified and a written justification for the difference supplied. This information required by Pub. L's 98-577 and 99-591 and is a new requirement for Part 15. The rule would apply to acquisitions involving major systems for civilian agencies and for all parts and components under DOD, NASA, and Coast Guard acquisitions.

The commercial pricing information is used by contracting officers to ensure that the Government does not pay prices for commercial spare and repair parts that exceed the lowest commercial sales prices at which such items are sold by the contractor to the general public unless the price differences are justified. Without the information, the government may pay prices for such supplies that are higher than prices paid by other customers.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *3,030;* responses per respondent, *10;* total annual responses, *30,300;* hours per response, *12;* and total response burden hours, *363,600.*

c. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *3,030;* hours per recordkeeper, *160,* and total recordkeeping burden hours, *484,800.*

d. Additional Data

An approval request for this information collection was submitted to OMB on June 25, 1985. On November 8, 1985, and on April 16, 1986, none of the submissions were approved.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-00xx, Certification of Commercial Pricing.

Dated: November 14, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88-26674 Filed 11-17-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 1 December 1988 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

November 15, 1988.

[FR Doc. 88-26740 Filed 11-17-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Range Closure Regulations for Bravo-20 Bombing Range, Naval Air Station, Fallon, NV

Authority: 50 U.S.C. 797; DoD Dir. 5200.8 of August 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714; 43 CFR 8364; Pub. L. 99–606, section 3(b).

Purpose

The purpose of this document is to promulgate regulations providing for closure of Bravo-20 Bombing Range (Bravo-20), Naval Air Station, Fallon, Nevada.

Definition

For the purpose of this subpart, Bravo-20 Bombing Range shall include the area of land comprising approximately 21,576.40 acres in Churchill County, State of Nevada, which has been withdrawn from all forms of appropriation under the public land laws and reserved for use by the Secretary of the Navy by Act of Congress, Public Law 99–606, Section 1, November 6, 1986. The legal description is as follows:

Mount Diablo Meridian, NV

T. 23 N., R. 32 E.,
Sec. 2,4,6,8,10,12,14,16,18,20,22,24,26,28,30.
T. 24 N., R. 32 E.,
Sec. 20,22,24,26,28,30,32,34,36.
T. 23 N., R. 33 E.,
Sec. 6,8,18,20,30;
Sec. 17 SE ¼;
Sec. 19 S ½.
T. 24 N., R. 33 E.,
Sec. 20,30,32.

Background

(a) Bravo-20 Bombing Range has been in use since 1942 as a live impact bombing range and as a west coast jettison range. The range is contaminated with an undetermined amount of unexploded ordnance including high explosive bombs up to 2,000 pounds. The Navy continually sanitizes the surface of the range. However, due to the geotectonic substratum associated with a dry lake bed, it is not possible to safely sanitize the subsurface area. It is vital to national defense that the operation and use of Bravo-20 be continued without undue and unnecessary interruption. (b) To prevent the interruption of the stated use of the base by the presence of any unauthorized person within the boundaries of Bravo-20 Bombing Range, and to prevent injury to any such person as a consequence of the dangerous conditions which exist, it is necessary to close Bravo-20 Bombing Range to all persons except those specifically associated with the operation and maintenance of the bombimg range.

Closure Provisions

Except for military personnel and civilian employees of the United States in the performance of their official duties and employees of contractors engaged in the execution of a bombing range clean-up contract, entry upon Bravo-20 Bombing Range or remaining thereon by any person whatsoever for any purposes without the advance consent of the Commanding Officer, Naval Air Station, Bravo-20 Bombing Range or his authorized representative, is prohibited. *See*, Pub. L. 99–606, section 3(b); 43 CFR 8364; the Internal Security Act of 1950, section 21 (50 U.S.C. 797).

Entry Procedures

(a) Any person or group of persons desiring to enter onto the Bravo-20 Bombing Range or portion thereof, shall submit a written request to the Commanding Officer, Naval Air Station, Fallon, Nevada, providing the following information:

(1) The purpose for which entry is requested;

(2) A listing of the activities that will be conducted to accomplish that purpose;

(3) The area of the range to which access is sought; and

(4) The identify of each individual for whom permission to enter is sought.

(b) Requests for entry will be granted only under extraordinary circumstances or in situations of compelling need. Approval of entry requests will be at the discretion of the Commanding Officer or his authorized representative and entry shall be conditioned upon the execution of a document releasing the United States from liability for any injury suffered to person or property as a result of entry onto the Bravo-20 Bombing Range.

(c) Failure to comply with the terms of the letter granting approval for entry will be grounds for immediate cancellation of the permission to enter Bravo-20 Bombing Range and will be the basis for immediate expulsion from the range.

Date: November 15, 1988.

Jane M. Virga,

Lt. JAGC, USNR, Assistant Federal Register Liaison Officer.

[FR Doc. 88–26709 Filed 11–17–88; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement on the East Fork Poplar Creek Remedial Action Project at the Oak Ridge Reservation; TN

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on the East Fork Poplar Creek (EFPC) Remedial Action Project, Oak Ridge, Tennessee.

SUMMARY: DOE announces its intent to prepare an EIS in accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), as amended, to assess the environmental implications of remedial action projects for the EFPC and its associated floodplain, in the environs of Oak Ridge, Tennessee. This EIS also will integrate the requirements of both NEPA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as described below.

Throughout the operational history of the Y–12 Plant, located on the Oak Ridge Reservation (ORR), production of radioactive and/or chemically hazardous wastewaters has occurred as a result of normal facility operations. Over the years, various treated and untreated portions of these wastewaters have been discharged to EFPC, which has its headwaters at the Y–12 Plant. These discharges have led to contamination of EFPC and its associated floodplain.

DOE is investigating the potential need for remedial action for the EFPC and the associated floodplain to mitigate the environmental impact from existing and potential surface and ground water contamination as well as contamination in the sediments. A floodplain/wetlands assessment will be prepared under 10 CFR 1022, the DOE regulations that implement Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands), which will describe impacts, altenatives for remediation, and mitigating measures to be employed in the action. In addition, DOE will consider potential environmental impacts, as well as engineering and cost considerations, in its decisions by preparing an EIS on potential remedial actions for EFPC and its floodplain.

This environmental review and analysis process will integrate the requirements of both NEPA and CERCLA, as amended by the Superfund Amendments and Reauthorization Act (SARA), to satisfy the policy requirements of DOE Notice 5400.4. All

EIS requirements under NEPA will be incorporated into the Remedial Investigation/Feasibility Study (RI/FS) documents of CERCLA. The purpose of this Notice of Intent is to present pertinent background information on the proposed scope and content of the RI/FS–EIS and to solicit comments and suggestions for consideration in their preparation. DOE invites interested agencies, organizations, and members of the general public to submit comments or suggestions to assist DOE in identifying significant environmental issues and determining the appropriate scope of the EIS.

Comments may be submitted to DOE by mail or presented at a scoping meeting to be held at the Main Auditorium of the American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, Tennessee, on Tuesday, December 6, 1988, starting at 7:30 p.m.

Upon completion of the draft EIS, its availability will be announced in the Federal Register and local news media. Comments will be solicited from Federal, State, and local agencies and interested members of the public. Comments on the draft EIS will be considered in preparing the final EIS.

ADDRESS: Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting may be submited to: Mr. Thomas S. Tison, Y–12 Site Office, Oak Ridge Operations, Post Office Box 2001, Oak Ridge, TN 37831–8775, (615) 576–9855.

Envelopes should be marked "Offsite East Fork Poplar Creek Floodplain Remedial Action Project."

General information on the process followed by DOE in preparing EISs may be obtained from: Office of NEPA Project Assistance, EH–25, Office of Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585, Attn.: Carol M. Borgstrom, Director, or call (202) 586–4600.

General information on the process followed by DOE in preparing RI/FSs may be obtained from: Office of Environmental Guidance and Compliance, Environmental Compliance Division, EH–232, Office of Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Attn.: Kathleen I. Taimi, Director, or call (202) 586–2113.

DATES: Written comments postmarked within 30 calendar days following the date of this notice will be considered in preparation of the draft EIS. Comments postmarked after that date will be considered to the maximum extent practicable.

Requests to speak at the scoping meeting should be received by Mr. Thomas Tison at the given address by November 29, 1988. Requests to speak may also be submitted at the meeting.

Background

The Y–12 Plant, located 40 km (24 miles) west of Knoxville, Tennessee, began operations in 1943. Initiailly, as part of the Manhattan Project, its functions was to separate U–235 from other isotopes of uranium. After World War II, the Y–12 Plant became engaged in other activities including research in nuclear products applications, energy research, and metallurgy. One component of these efforts was the use of mercury at Y–12 as part of the production of enriched lithium for use in thermonuclear weapons. Millions of pounds of mercury were used in this effort.

Mercury is the most significant contaminant found in the EFPC and the associated floodplain. An estimated 239,000 pounds of mercury were released to EFPC during the period 1950–1982. In addition, other heavy metals, radionuclides, and some organic compunds also have been found in EFPC. Releases of mercury to the environment have occurred both during production and since cessation of production operations. During Y–12 operations, spills and maintenance operations resulted in losses to land, air, and surface water.

A number of wasterwater collection and storage facilities have been constructed or are planned that will mitigate releases to EFPC. These collection facilities are an integral part of the Y–12 Plan Water Pollution Control Program. Wastewaters having volumes too large to justify a storage system at the point of generation (e.g., coal pile runoff and plating rinse waters from the main plating shop) are directly piped to their corresponding treatment facilities. Some Process wastewaters are permitted to discharge with minimal treatment; these waste streams will continue to discharge to EFPC as long as toxicity testing deems the effluent nontoxic.

In addition to the strategy for eliminating wastewater discharged to EFPC, strategies exist for minimizing pollutants reaching waters of the State. For example, the use of best management practices (BMPs) will minimize the discharge of pollutants to receiving waters. BMPs include, but are not limited to, the use of better process controls, preventive maintenance programs, inspection programs, and adequate planning to mitigate accidental spills. In addition, various spill prevention programs have been initiated to reduce the potential for accidental spills in those areas where there is a risk.

Even though the process buildings are no longer used to conduct mercury separation activities, the process equipment, contaminated switch gear, building materials, floors, and building and storm drains remain a source of potential contamination, and a potential for release of mercury to the environment. Steps have been taken to mitigate these potential releases. These potential sources and pathways to the environment will be a separate remedial action for the Y–12 Plant and will be assessed in separate documentation.

After release by DOE in May 1983 of information which documented mercury contamination offsite, DOE initiated sampling in EFPC in the Oak Ridge Community. DOE also requested the Tennessee Valley Authority (TVA) to participate in studies to evaluate soil and sediment contamination in the EFPC environs. Analysis of 394 soil and sediment samples from 130 locations in the channel and floodplain of EFPC indicate approximately 126 million ft3 (760,000 tons) of mercury contaminated sediment and soil with mercury concentrations exceeding five parts per million (ppm). This sediment and soil contains an estimated 170,000 pounds of mercury. Approximately 80 percent of the total mercury is contained in 25 percent of the contaminated sediment and soil (i.e., in sediment and soil with a concentration exceeding 100 ppm). Other contaminants in the floodplain include: Arsenic, barium, beryllium, cadmium, chromium, copper, lead, nickel, lithium, selenium, silver, thorium, uramium zinc, and PCBs. Organic constituents may also be present.

The community and floodplain studies are originally coordinated by the Oak Ridge Task Force (ORTF) consisting of representatives from the DOE, the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Tennessee Department of Health and Environment (TDHE), the City of Oak Ridge, and the TVA.

Remedial actions currently are being conducted on the ORR according to Resource Conservation and Recovery Act (RCRA) Sections 3004 (u) and 3004 (v) permit requirements. When the ORR is placed on the National Priorities List, some cleanup activities will be performed under CERCLA, as amended, not RCRA. The U.S. Environmental Protection Agency is developing a

strategy to integrate remedial actions under RCRA and CERCLA to minimize duplication of effort and to ensure that corrective actions are consistent with the National Contingency Plan.

Preliminary Definition of Alternatives To Be Addressed in the RI/FS–EIS

DOE intends to conduct a comprehensive environmental process to meet the requirements of CERCLA and NEPA for implementing response actions in the EFPC area. the environmental review and analysis process has two major parts, a Remedial Investigation (RI) and a Feasibility Study (FS).

The purpose of the RI is to characterize the site and the nature and extent of contamination. The FS then is designed to assess a range of remedial action alternatives to address contamination at the site. The results of each are presented in a report. During the FS phase, bench or pilot tests of potential waste treatment technologies will be conducted as appropriate. Also, a baseline risk assessment will be conducted to identify the primary health and environmental threats at this site.

In addition to elimination or stabilization of mercury in the process areas and building drains, DOE already has begun evaluation of several remedial action alternatives for EFPC and its floodplain. During the FS screening of waste treatment technologies, several remedial alternatives will be identified and screened, general performance criteria for each alternative will be developed, and a detailed evaluation and comparison of reasonable (i.e., screened) alternatives will be performed. A specific preferred alternative will not be identified until the FS is complete. However, the RI/FS–EIS will at a minimum consider the proposed alternatives listed below.

Alternative 1: Passive Remediation. This alternative depend on the natural dynamics of the ecosystem to correct any adverse conditions in the EFPC stream bed and associated floodplain and is essentially the "no action" alternative.

Alternative 2: Dredge and Dispose of all Loose Sediment in the Creek by Mechanical or Suction Dredging. This alternative would use mechanical or suction dredging to remove the loose sediments in EFPC in conjunction with proper disposal of the dredged sediments. These dredged sediments would be dewatered prior to disposal, in accordance with applicable requirements, and the liquid effluent would be collected and, if required, treated at a Y–12 Plant wastewater treatment facility.

Alternative 3: Remove, Dispose, and Replace Floodplain Soils to Various Depths. This alternative would remove and replace floodplain soils. The removed contaminated soil would be properly disposed of in an approved facility. The replacement soils would be tested to confirm they are not contaminated prior to placement at the remediation site.

Alternative 4: Cover Floodway Fringe Soils with Various Media. In this alternative, the floodway fringe soils would be covered to provide protection against runoff erosion of the surface soils and against direct human contact where necessary. Riprap would be used to cover the floodway fringe soils to a depth of 1 foot. For vegetation support, additional general fill would be put in place with a layer of top soil cover. This alternative would require removel of all trees and shrubs befor putting the material in place.

Alternative 5: Permanently Reroute the Creek within the Floodplain and Remediate Abandoned Area with One of the Other Alternatives. This alternative would permanently reroute the EFPC within the confines of the existing floodplain. One of the other identified alternative would be implemented to remediate the abandoned area. Material excavated from the construction of the new creek would be properly disposed of in an approved facility.

Alternative 6: Permanently Reroute the Creek Outside of the Floodplain and Remediate the Abandoned Area with One of the Other Alternatives. This alternative considers permanent rerouting of the creek outside the existing floodplain, in conjunction with one of the other alternatives to remediate the abandoned area. Uncontaminated materials excavated from the construction of the new creek would be distributed over the floodway fringe.

Alternative 7: Stabilize Soil in Areas Where Entering Storm Drains Traverse the Floodplain. This alternative proposes to stabilize storm drains traversing the floodplain to prevent bank erosion. The use of riprap may be an effective method for stabilizing the creek bank.

Alternative 8: Stabilize Existing Stream Channel Banks. This alternative proposes the stabilization of the existing creek by preventing the erosion of the banks due to in-channel flow and overflow from stream blockage. An effective method for bank stabilization is riprap protection. However, in general, fill would not be used in the floodway unless an equivalent volume of material is removed. This alternative would require the removal of all trees and shrubs within 25 feet of the creek bank.

Alternative 9: Dredge and Dispose of all Sediments in Creek and Remove, Dispose, and Replace Floodplain Soils to Various Depths. This alternative combines alternatives 2 and 3 and involves mechanical dredging of the creek sediments and excavation of the floodplain soil.

Alternative 10: Stabilize Existing Stream Channel Banks, Dredge and Dispose of all Loose Sediments in Creek, and Stabilize Soil in Areas Where Entering Storm Drains Traverse the Floodplain. This alternative combines 2, 7, and 8. The description of these alternatives may be found in the appropriate sections.

Preliminary List of Potential Issues

There are a number of potential issues associated with the previously mentioned remedial action alternatives. Some of these issues deal with environmental and public health impacts, whereas others are factors which may influence or be influenced by implementation of one or more of the alternatives. The following is a description of major issues which may require analysis in the RI/FS–EIS. This list is not intended to be all inclusive or to preclude additional issues from consideration.

1. Potential Environmental Impacts

The potential impacts of the described alternatives can be grouped into three major categories as follows: Impacts to human health, ecological impacts, and socioeconomic impacts. Also of concern are engineering and technical issues and potential institutional issues. The actual impacts have yet to be determined. Areas of interest within each of these identified topics include:

A. Potential Impacts on Human Health

- Associated with cleanup, transport, treatment, and/or disposal of contaminated material:
- Associated with accidental worker exposure;
- Associated with a resuspension of contaminated sediments and soils through remedial activities that may increase the potential exposure to the general public through the air, water, and food-chain pathways;
- Associated with leaving the contaminated soil and sediment in place; and

- Associated with potential contamination of the aquifers underlying and recharged by the EFPC floodplain.

B. Potential Ecological Impacts

- Associated with effects of contaminants on aquatic and terrestrial flora and fauna;
- Associated with changes in flow of EFPC due to remedial activities; and
- Associated with the destruction of the floodplain ecosystem by the removal of all vegetation in connection with some of the remedial actions options.

C. Potential Socioeconomic Impacts

- Associated with marketability of properties potentially contaminated, especially located on the EFPC floodplain; and
- Associatred with near- and short-term costs and benefits of remediation alternatives.

2. Potential Engineering and Technical Issues

Several technical and engineering issues are associated with each of the potential alternatives. One involves the logistics problems associated with using the required heavy equipment in the saturated areas of the floodplain. This problem consists of two parts: first, construction will slow down due to difficulty with groundwater, slowing down the effort and potentially creating a greater environmental problem than originally present. The second part of this problem is associated with the operation of equipment on the floodplain that may cause the contaminated sediments to be resuspended and buried contamination to resurface. Appropriate control measures will be considered to mitigate the potential effects of such activities.

3. Potential Institutional Issues

The investigation of remedial action alternatives will involve decisions by DOE, the TDHE, and the EPA on several public policy and regulatory issues. In addition, the U.S. Army Corps of Engineers must be consulted for possible permit requirements in order to work and possibly modify the creek channel and/or floodplain during remediation.

One issue is the definition of the level of cleanup (or how clean is clean?) for the creek sediments and floodplain soils. In addition, the means for proper disposal of the removed sediments (if sediment removal is the remediation of choice) must be addressed prior to initiation of the effort.

Scoping

The scoping process will involve all interested agencies (Federal, State, and local), groups, and members of the general public. Oral and written comments are invited at the public scoping meeting on both the preliminary list of alternatives and the issues to be considered in the RI/FS–EIS.

This will be an informal meeting with a presiding officer and established procedures governing the conduct of the meeting. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements will not be cross-examined by other speakers or the presiding officer. To ensure that everyone who wishes to speak has a chance to do so, 5 minutes will be allotted to each speaker. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations.

Persons wishing to speak on behalf of an organization should identify the organization in their request. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting and will be called upon to present their comments as time permits. Both oral and written comments will be given equal consideration.

A transcript of the public scoping meeting will be taken and retained by DOE and made available for inspection at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, during business hours, Monday through Friday. Additional copies of the public scoping meeting transcript and other NEPA documents and major references used in the preparation of the RI/FS–EIS also will be available during normal business hours at the following locations:

The Oak Ridge Federal Building Reading Room, 200 Administration Road, Oak Ridge, Tennessee 37830.

The Oak Ridge Public Library, Civic Center, Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

A notice of locations where these documents will be available will be published in the **Federal Register** along with the announcement of availability of the draft RI/FS–EIS. In addition, copies of the public scoping meeting transcript will be made available for purchase.

Those interested parties who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the draft EIS should notify Mr. Tom Tison accordingly.

Related NEPA Documentation

NEPA documents have been or are being prepared for other activities on the Oak Ridge Reservation that are related to but not within the scope of the proposed action. These EIS's are:

1. U.S. Department of Energy, Final Environmental Impact Statement, Incineration Facility for Radioactively Contaminated Polychlorinated Biphenyls and Other Wastes, Oak Ridge Gaseous Diffusion Plant, Oak Ridge, Tennessee, DOE/EIS–0084. June 1982. U.S. Department of Energy, Washington, DC.

2. U.S. Department of Energy, Draft Environmental Impact Statement (in preparation), Management of Hazardous, Mixed, and Low-Level Waste on the U.S. Department of Energy Oak Ridge Reservation. Notice of Intent issued on October 26, 1988. U.S. Department of Energy, Washington, DC.

Signed in Washington, DC, this 14th day of November 1988, for the U.S. Department of Energy.

Ernest C. Baynard III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–26763 Filed 11–17–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CI89–38–000 et al.]

Elf Aquitaine, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Elf Aquitaine, Inc.

[Docket No. CI89–38–000]

November 10, 1988

Take notice that on November 1, 1988, Elf Aquitaine, Inc. (Elf Aquitaine) of 1000 Louisiana, Suite 3800, Houston, Texas 77002, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term, blanket certificate with pregranted abandonment authorization to authorize sales of uncommitted gas by Elf Aquitaine and by Elf Aquitaine as operator and/or co-working interest owner on behalf of other working interest owners, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: November 29, 1988, in accordance with Standard Paragraph J at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP89–124–000]

November 10, 1988

Take notice that on November 2, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–124–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Continental Natural Gas, Inc. (Continental) under WNG's blanket certificate issued in Docket No. CP86–631–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG proposes to transport on an interruptible basis, up to 40,000 MMBtu equivalent of natural gas on a peak day, 40,000 MMBtu equivalent on an average day, and 14,600,000 MMBtu equivalent on an annual basis for Continental. It is stated that WNG would receive the gas for Continental's account at various receipt points in Kansas, Missouri, Oklahoma, Texas, and Wyoming, and would deliver equivalent volumes of gas at various delivery points in Kansas, Oklahoma, Texas and Wyoming. It is asserted that WNG commenced the transportation service September 1, 1988, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–79.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89–136–000]

November 10, 1988

Take notice that on November 4, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–136–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis for LaSER Marketing Company (LaSER). United explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–298. United explains that the peak day quantity would be 618,000 MMBtu the average daily quantity would be 618,000 MMTtu, and that the annual quantity would be 225,570,000 MMBtu.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Natural Gas Pipe Line Company of America

[Docket No. CP89–115–000]

November 10, 1988

Take notice that on November 1, 1988, Natural Gas Pipe Line Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–115–000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas, on an interruptible basis, on behalf of Amoco Production Companmy (Amoco), a producer of natural gas, under its blanket certificate issued in Docket No. CP86–582–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to transport, on an interruptible basis pursuant to a gas transportation agreement dated August 15, 1988, up to a maximum of 400,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS).

Natural proposes to receive the gas in the states of Texas, Oklahoma, Illinois, Louisiana, New Mexico, Arkansas, Kansas, Missouri, Wyoming, Nebraska, and in offshore Texas and Louisiana. Natural then proposes to redeliver the gas to a point in Texas. Natural states that service commenced on September 1, 1988, as reported in Docket No. ST89–484, pursuant to § 284.223(a) of the Commission's Regulations. Natural further states that the average day and annual quantities would be 150,000 MMBtu and 54,750,000 MMBtu, respectively.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89–135–000]

November 10, 1988

Take notice that on November 4, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP89–135–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act for LaSER Marketing Company (LaSER), all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for LaSER, a marketer. United explains that service commenced October 4, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–299. United further explains that the peak day quantity would be 103,000 million Btu, the average daily quantity would be 103,000 million Btu, and the annual quantity would be 37,595,000 million Btu. United explains that it would receive natural gas for LaSER's account at numerous points in States of Louisiana and Texas. United further explains that, it would redeliver natural gas for the account of LaSER in the States of Alabama, Louisiana, Texas, Mississippi, and Florida.

Comment date: December 27, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP89–122–000]

November 14, 1988

Take notice that on November 2, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–122–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Caporale Energy Corporation (Caporale) under the blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG proposes to transport on an interruptible basis up to 2,433 MMBtu equivalent of natural gas on an average day, 2,433 MMBtu equivalent on a peak day, and 888,045 MMBtu equivalent on an annual basis for Caporale. It is stated that WNG would receive the gas for Caporale's account at various receipt points in Kansas and would deliver equivalent volumes of gas at various delivery points in Kansas. It is asserted that WNG commenced the transportation service September 6, 1988, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–96.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-118-000]

November 14, 1988

Take notice that on November 1, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-118-000 a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act for authorization to transport natural gas on behalf of Energy Marketing Exchange, Inc. (Energy Marketing), a marketer of natural gas, on an interruptible basis, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that it would transport natural gas for Energy Marketing, through existing facilities, as follows:

30,000 MMBtu on a peak day
22,500 MMBtu on an average day
10,950,000 MMBtu on an annual basis

It is further stated that service commenced on September 1, 1988, under the 120 day automatic authorization provisions of § 284.223(a), as reported in Docket No. ST88-5861.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. ANR Pipeline Company

[Docket No. CP89-134-000]

November 14, 1988

Take notice that on November 4, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center Detroit, Michigan 48243, filed in Docket No. CP89-134-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP887-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport natural gas on an interruptible basis for Coastal Gas Marketing Company (Coastal). ANR explains that service commenced September 3, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-552. ANR further explains that the peak day quantity would be 125,000 dekatherms, the average daily quantity would be 125,000 dekatherms, and that the annual quantity would be 45,625,000 dekatherms. ANR explains that it would receive natural gas for Coastal's account from existing points of receipt in onshore and offshore Louisiana, offshore Texas, and Michigan. ANR states that the points of delivery are located in the states of Louisiana and Michigan.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP89-123-000]

November 14, 1988

Take notice that on November 2, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-123-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Kansas City Power & Light Company (KCPL) under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG proposes to transport, on an interruptible basis, up to 100,000 MMBtu equivalent of natural gas on a peak day, 5,500 MMBtu equivalent on an average day and 36,500,000 MMBtu equivalent on an annual basis for KCPL. It is stated that WNG would receive the gas for KCPL's account at various receipt points in Kansas, Missouri, Oklahoma and Wyoming, and would deliver equivalent volumes of gas at various delivery points in Kansas and Missouri. It is asserted that WNG commenced the transportation service September 4, 1988, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-78.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-116-000]

November 14, 1988

Take notice that on November 1, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-116-000, a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, for authorization to transport natural gas on behalf of Apache Marketing, Inc. (Apache), a marketer of natural gas, on an interruptible basis, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that it would transport natural gas for Apache, through existing facilities, as follows:

100,000 MMBtu on a peak day
75,000 MMBtu on an average day
36,500,000 MMBtu on an annual basis

It is further stated that service commenced on September 2, 1988, under the 120 day automatic authorization provisions of § 284.223(a), as reported in Docket No. ST88-5865.

Comment date: December 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings 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, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for 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. 88-26760 Filed 11-17-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3479-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 31, 1988 through November 4, 1988 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. DA-AFS-L65096-AK, 1981-86 and 1986-90 Alaska Pulp Long-Term Timber Sale Operating Plan, Updated Information and Reanalysis of Alternatives, Implementation, Coast Guard Bridge Permit, Section 10 and 404 Permits, Tongass National Forest; Juneau and Sitka Boroughs, AK.

Summary: EPA will defer its official review of the Phase I draft supplemental EIS until the Phase II draft supplemental EIS is filed. The final supplemental EIS is expected to combine both phases in one document.

ERP No. D-COE-E32069-FL, Rating EO2, Miami Harbor Channel Navigation Improvements, Implementation, Dade County, FL.

Summary: EPA has identified potential significant environmental impacts associated with the selected alteranative B. While the selected alternative is smaller than the originally permitted facility, the quality of the seagrasses which would have to be sacrificed for the new alignment is much greater. The relative scarcity of these submerged aquatics, their importance as a habitat/food source to numerous marine species, and the practical impossibility of replacing them in-kind form the basis of our objections to destroying these seagrasses when there are practical alternatives. EPA has environmental concerns with reconfiguration alternative A.

(Note: The above summary should have appeared in the 11-10-88 FR Notice.)

ERP No. D-COE-F-36155-IL, Rating LO, Liverpool Village Flood Control Project, Implementation, Illinois River, Fulton County, IL.

Summary: EPA has no objection to the proposed project in this document providing that 1) the proposed plan contains erosion control measures to prevent soils from entering the river during construction phase, and 2) that after exacavation, the borrow site be converted into wetlands to offset the loss of wetlands due construction of the levee.

Final EISs

ERP No. F-FHW-E40700-FL, FL-5/US 1 Upgrading, FL-922/NE-123rd Street to NE 203rd Street, Funding, Section 404 and Coast Guard Bridge Permits, Dade County, FL.

Summary: EPA recommends that clean-up actions at 8 to 13 potential hazardous waste site within project boundaries is boundaries is need that it be coordinated with county and state agencies.

(Note: The above summary should have appeared in the 11-04-88 FR Notice.)

ERP No. F-NPS-L61179-AK, Katmai National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of this document has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. F-NPS-L611180-AK, Denali National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. F-SCS-E36161-MS, Town Creek Watersheed Flood Protection Plan, Funding and Implementation, Lee, Pontotoc, Prentiss and Union Counties, MS.

Summary: EPA has no objections to the project as proposed.

ERP No. FS-SFW-L64027-AK, Becharof National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EIS has been completed and the project found to be satisafactory. No formal comments were sent to the agency.

ERP No. FS-SFW-L64027-AK, Becharof National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. FS-SFW-L64028-AK, Alaska Peninsula National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. FS-SFW-L6408-AK, Alaska Peninsula National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EPA has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

Dated: November 15, 1988.

Armand Lepage,

Acting Director, Office of Federal Activities.

[FR Doc. 26766 Filed 11-17-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3479-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed November 7, 1988 Through November 11, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880375, Draft, SCS, CA, Upper Penitencia Creek Watershed Flood Damage Reduction Plan, Funding, Implementation and 404 Permit, Cities of San Jose and Milpitas, Santa Clara County, CA, Due: January 9, 1989, Contact: Eugene E. Andrencitti (916) 449-2883.

EIS No. 880376, Draft, FHW, NY, NY-96 Improvement, Meadow Street in the City of Ithaca to Duboise Road in the Town of Ithaca, Funding, Tompkins County, NY, Due: January 3, 1989, Contact: Harold J. Brown (518) 472-3616.

EIS No. 880377, Final, BLM, AK, Beaver Creek Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, White Mountain National Recreation Area, Anchorage, AK, Due: December 19, 1988, Contact: Michael J. Penfold (907) 271-3114.

EIS No. 880378, Final, IBR, TX, San Jacinto River Basin Water Supply Project, Municipal and Industrial Water Use, Implementation, Montgomery, Harris, Grimes, Walker, San Jacinto,

Fort Bend, Liberty and Waller Counties, TX, Due: January 3, 1989, Contact: Nicolas Palacios (512) 482–5641.

EIS No. 880379, Final, COE, MI, Ecorse Creek Drainage Basin Flood Protection, Due: January 3, 1989, Contact: Les E. Weigum (313) 226–6752.

EIS No. 880380, Draft, BLM, WY, Amoco Carbon Dioxide Projects, Construction and Operation, Plan Approval, Big Horn, Carbon, Fremont, Hot Springs, Lincoln, Natrona, Park, Washakie and Sweetwater Counties, WY, Due: January 6, 1989, Contact: Glen Nebeker (307) 261–5101.

Amended Notices

EIS No. 880293, Draft, COE, MS, Upper Yazoo Basin Fish and Wildlife Mitigation Study for Fish and Wildlife Losses, Implementation, Due: January 31, 1989, Contact: Marvin Cannon (601) 634–5437. Published FR 9–9–88 — Review period extended.

EIS No. 880366, Final, FHW, ME, Fore River Bridge/Million Dollar Bridge/ME–77 Rehabilitation or Replacement, Broadway in South Portland to York Street in Portland, Section 10 and 404 Permits, USCG Bridge Permit and Funding, Fore River, Cumberland Co., Due: December 19, 1988, Contact: William Richardson (207) 622–8487.

Published FR 11–10–88 — Review period reestablished.

EIS No. 880369, DRevised, COE, MS, Gulfport Harbor Deep Draft Navigation Project, Channel Improvements, Implementation, Garrison County, MS, Due: December 30, 1988, Contact: Susan Invester Rees (205) 690–2724.

Published FR 11–10–88 — Review period extended.

Dated: November 15, 1988.

Armand Lepage,

Acting Director, Office of Federal Activities.

[FR Doc. 88–26767 Filed 11–17–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00269A; FRL–3478–1]

FIFRA Scientific Advisory Panel Subpanel; Correction of Open Meeting Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Meeting notice; correction.

SUMMARY: In the November 1, 1988 issue of a **Federal Register**, EPA announced a meeting of the FIFRA Scientific Advisory Panel Subpanel to be held on November 22, 1988 (53 FR 44118). This notice corrects the first paragraph of the Supplementary Information.

DATE: The date and time of meeting remain unchanged: Tuesday, November 22, 1988, from 9:00 a.m. to 2:00 p.m.

ADDRESS: The meeting will be held at: U.S. Environmental Protection Agency, Room 1112, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By Mail: Robert B. Jaeger, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–769C), 401 M Street SW., Washington, DC 20460.

Office location and phone number: Rm. 816G, CM #2, Arlington, VA, (703–557–4369).

SUPPLEMENTARY INFORMATION:

EPA announced a public meeting of the SAP Subpanel in a **Federal Register** notice (FR Doc. 88–25197) on November 1, 1988. The first paragraph of the Supplementary Information should be replaced with the following:

Scientific issues will be reviewed concerning EPA's proposal to amend the Experimental Use Permit (EUP) regulation for pesticides. The proposed amendments clarify the circumstances under which an EUP is presumed not to be required and specify that the presumption is based upon risk. EPA also proposes to require notification before initiation of small-scale testing of certain genetically modified microbial pesticides in the environment. Each notification will be reviewed by the Agency, and a determination made as to whether an EUP will be required. Environmental Biosafety Committees approved by EPA may participate in the review process. This notification scheme would implement provisions of the Agency's policy statement of June 26, 1986 (51 FR 23302), with some modifications, and is intended to provide sufficient oversight of the early testing of these microbial pesticides to mitigate any adverse human health or environmental effects.

The first paragraph of the Supplemental Information published in the November 1, 1988 **Federal Register** notice (FR Doc. 88–25197) described an alternative option which was considered by the Agency during development of the proposed rule. As indicated in the Preamble (V. Request for Comments, page 15) to the draft proposed rule, the Agency is requesting comment on this alternative option.

Dated: November 9, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88–26724 Filed 11–17–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51718;FRL–3478–9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of six such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89–63, 89–64, 89–65	January 22, 1989.
P 89–66, 89–67, 89–68	January 24, 1989.

Written comments by:

P 89–63, 89–64, 89–65	December 23, 1988.
P 89–66, 89–67, 89–68	December 25, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS–51718]" and the specific PMN number should be sent to: Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room 201 East Tower, 401 M Street, SW., Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATON CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

P 89–63

Manufacturer. Confidential.

Chemical. (G) Poly acrylate/methacrylate.

Use/Production. (G) Dispersively used coating. Prod. range: 80,000–100,000 kg/yr.

P 89–64

Manufacturer. Confidential.
Chemical. (G) Styrenated functionalized methacrylic polymer.
User/Production. (S) Vehicle in automotive refinished topcoat. Prod. range: 215,000–259,000 kg/yr.

P 89–65

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–66

Importer. Confidential.
Chemical. (G) Ethanaminum.
Use/Import. (G) Ambient suspended particle collector/conditioner. Import range: Confidential.

P 89–67

Importer. Confidential.
Chemical. (G) Styrnen acryl copolymer.
Use/Import. (G) Binder resin of toner. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>5,000 mg/kg species(Rat).

P 89–68

Manufacturer. Confidential.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (G) Coatings. Prod. range: Confidential.

Date: November 8, 1988.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Toxic Substances.

FR Doc. 88–26726 Filed 11–17–88; 8:45 am]

BILING CODE 6560–50–M

[FRL 3478–4]

Proposed Determination to Prohibit, or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site: Ware Creek, James City County, VA

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: EPA Region III is proposing to take action under section 404(c) of the Clean Water Act (CWA) to prohibit, deny, or restrict specification or use of certain Ware Creek waters in the area of James City County, Virginia, as a disposal site for dredged or fill materials in connection with construction of an impoundment for County Water Supply. The waters of the United States which are subject to the proposed section 404(c) action include those which would be affected by a dam proposed to be constructed across Ware Creek approximately 1,000 feet downstream from the confluence of Ware Creek and France Swamp. This section 404(c) action is being proposed because EPA Region III has reason to believe that filling and inundating the above-described waters of the United States, including wetlands, would have an unacceptable adverse effect on fishery areas, wildlife and recreational areas. Furthermore, the EPA has reason to believe that alternatives are available to James City County which will meet projected water supply needs at less environmental cost and which are economically feasible. In accordance with EPA regulations at 40 CFR 231.4, the Regional Administrator has determined that a public hearing on this proposed section 404(c) action would be in the public interest.

Purpose of Public Notice: The Regional Administrator of EPA Region III is giving notice of this proposed section 404(c) action and of a public hearing to consider the action. EPA Region III is soliciting information, comments and observations on any and all aspects of this issue and particularly on whether filling and/or inundating the above-described Ware Creek waters, including wetlands, would have an unacceptable adverse effect on fishery areas, wildlife and recreational areas. Data or observations of particular concern to this proposed section 404(c) action include the vegetative, hydrologic and other ecological characteristics of the project area including the proposed lake impact area and balance of the Ware Creek watershed and observations of, or information concerning, fish and wildlife (including but not limited to endangered, or threatened species) utilizing the project area and recreational use (including hunting and fishing) of the project area.

Public Comment: Notice of the location and date for the public hearing for this proposed section 404(c) action will be published in the **Federal Register** within 21 days of the date of this notice. Comments may be submitted prior to the hearing or presented orally and/or in writing at the hearing. The hearing record will remain open until close of business 15 days following the public hearing. Written comments will be accepted until that time. Comments submitted prior to, or after the hearing, or requests for copies of the proposed determination should be submitted to EPA Region III's designated Record Clerk, Ms. Clara Haraburda, Environmental Assessment Branch (3ES40), U.S. EPA, 841 Chestnut Bldg., Philadelphia, PA, 19107. All comments will be fully considered in reaching a decision to either withdraw the proposed determination or prepare a recommended determination to prohibit, deny or restrict the specification or use of all or portions of Ware Creek and its tributaries as a disposal site for construction of the Ware Creek reservoir. The Regional Administrator will either withdraw the proposed determination or forward a final Regional recommendation and the administrative record to the EPA Assistant Administrator for Water in Washington, DC, for review and a final determination. The procedures to be used in making the final determination are specified at 40 CFR 231.6.

Copies of all comments submitted in response to this notice will be available for public inspection during normal working hours (8:00 a.m. to 5:00 p.m.) at the EPA Region III office.

SUPPLEMENTARY INFORMATION

Background

A. Section 404(c) Procedure and Criteria

Section 301(a) of the CWA, 33 U.S.C. 1311(a), prohibits the discharge of pollutants, including dredged and fill material, into waters of the United States (including wetlands) except as in compliance with, among other things, section 404 of the CWA, 33 U.S.C. 1344. Section 404 of the CWA authorizes the Secretary of the Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites through the application of environmental guidelines developed by EPA in conjunction with the Secretary under section 404(b) of the CWA, 33 U.S.C. 1344(b), or where warranted by economics of anchorage and navigation, except as provided by section 404(c) of the CWA, 33 U.S.C. 1344(c). Section 404(c) of the CWA states that the Administrator of the U.S. EPA is authorized to prohibit the specification of any defined area as a disposal site and he is authorized to deny or restrict the use of any defined area for specification as a disposal site, whenever he determines, after notice and opportunity for public hearing, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. The procedures for implementation of section 404(c) are set forth in the Code of Federal Regulations, 40 CFR Part 231. Under those procedures, if the Regional Administrator has reason to believe that use of a site for the discharge of dredged

or fill material may have an unacceptable adverse effect on applicable resources, he may begin the section 404(c) process by notifying the Corps of Engineers and the applicant that he intends to issue a proposed determination. Unless within 15 days the applicant or the Corps has demonstrated to the satisfaction of the Regional Administrator that no unacceptable adverse effects will occur, or that corrective action to prevent an unacceptable adverse effect satisfactory to the Regional Administrator will be taken, the Regional Administrator publishes a notice in the Federal Register of his proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator decides whether to withdraw his proposed determination or prepare a recommended determination. A decision to withdraw may be reviewed at the discretion of the Assistant Administrator for Water at EPA Headquarters. If the Regional Administrator prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for Water at EPA Headquarters for a final decision affirming, modifying, or rescinding the recommended determination. In accordance with the regulations at 40 CFR 231.6, the U.S. Army Corps of Engineers and the applicant are provided with another opportunity for consultation before the final determination is made.

With this notice, the Regional Administrator is issuing a proposed determination that specification of the site should be prohibited, withdrawn or restricted for use as a disposal site because of unacceptable adverse environmental effects. Specifically, this notice is the Regional Administrator's proposed determination covering the discharge of dredged or fill material into waters of the United States, (including wetlands), to wit, Ware Creek, by James City County, Virginia. This proposed determination does not represent a judgement that discharge of dredged or fill material will result in unacceptable adverse effects; it merely means that the Regional Administrator believes that, after evaluating the information available to him, an unacceptable adverse effect could result from the specification or use for specification of the area for disposal of dredged or fill material.

B. Nature of Proposed Discharge

James City County proposes to discharge dredged and/or fill material into Ware Creek and its adjacent wetlands in order to construct an earthen dam to impound water for a water supply reservoir. The dam will measure 1,450 feet in length with a crest elevation of +48 feet mean sea level (msl). The reservoir is designed for a normal pool elevation of +35 feet msl, with an average depth of 16 feet. It will store 6,355 million gallons of water and provide a safe yield of 9.4 million gallons per day (mgd). For construction of the 1,217 acre lake, 1,325 acres of land will be inundated and/or cleared.

C. Characteristics of the Site

The Ware Creek watershed is approximately 14,600 acres in size and contains a mix of land uses and habitat types. The primary upland habitat types are hardwood forest (5,808 acres), mixed pine-hardwood forest (3,914 acres) and mixed agricultural residential (3,706 acres). Dominant upland hardwood trees include various species of oaks (*Quercus* spp.), hickories (*Carya* spp.), American beech (*Fagus grandifolia*), black gum (*Nyssa sylvatica*), red maple (*Acer rubrum*), sweetgum (*Liquidambar styraciflua*) and tulip poplar (*Liriodendron tulipifera*). The understory and shrub layers are characterized by sassafrass (*Sassafrass albidum*), flowering dogwood (*Cornus florida*) serviceberry (*Amelanchier* sp.), blueberry (*Vaccinium* spp.), huckleberry (*Gaylussacia* spp.) and mountain laurel (*Kalmia latifolia*). Conifer trees distributed throughout the predominantly hardwood and mixed pine-hardwood forests include loblolly pine (*Pinus taeda*), shortleaf pine (*P. echinata*) and Virginia pine (*P. virginiana*).

There are approximately 986 acres of vegetated wetlands and 184 acres of open water habitat within the Ware Creek watershed. The mixture of habitat types results in a complex mosaic of interspersed wetland communities and adjacent uplands. A total of 44 wetland community types have been identified. At the juncture of Ware Creek and the York River the wetlands are estuarine, intertidal and comprise a mixture of smooth cordgrass (*Spartina alterniflora*), big cordgrass (*S. cynosuroides*) and black needlerush (*Juncus roemerianus*). As one proceeds upstream, the influence of the tides diminishes and the salinities decrease. In this vicinity the marshes are dominated by mixtures of wild rice (*Zizania aquatica*), cattails (*Typha* spp.), arrowarum (*Peltandra virginica*), pickerel weed (*Pontederia cordata*), bulrushes (*Scirpus* spp.) and rushes (*Juncus* spp.).

Beaver (*Castor canadensis*) have had a profound impact within the non-tidal freshwater portions of Ware Creek and its tributaries. The result has been a complex mixture of forested, scrub/shrub and herbaceous wetlands dominated by sycamore (*Platanus americana*), green ash (*Fraxinus pennsylvania*), sweet gum, red maple, black gum, holly, river birch (*Betula nigra*), willow (*Salix* spp.), blueberry, alder, buttonbush (*Cephalanthus occidentalis*), viburnums (*Viburnum* spp.), spicebush (*Lindera benzoin*), ferns (*Osmunda* spp.; *Woodwardia* spp.; *Onoclea sensibilis*), rice cutgrass (*Leersia oryzoides*), wild rice, bulrushes, rushes, sedges (*Carex* spp.), cattails, burreeds (*Sparganium* spp.) and smartweeds (*Polygonum* spp.)

In addition to beaver, the wetlands are utilized by a variety of migrating and resident songbirds, migratory waterfowl, game birds (e.g. woodcock—*Philohela* minor), wading birds and (probably) river otter (*Lutra canadensis*). Of particular note is the location of an 81-nest great blue heron rookery (*Ardea herodias*—a species of special concern) within the Ware Creek wetlands, and the sighting of bald eagles (*Haliaeetus leucocephalus*—an endangerd species) in and around the Ware Creek basin.

The adjacent uplands provide adequate food and shelter to support game species such as white-tailed deer (*Odocoileus virginiana*), grey squirrel (*Sciurus carolinensis*) and turkey (*Meleagris gallopavo*) as well as a variety of non-game vertebrates.

Game fish found in the aquatic portions of the watershed include largemouth bass (*Micropteris salmoides*) and sunfish (*Lepomis* spp.) in freshwater areas and white perch (*Roccus americano*) in estuarine reaches. Although Ware Creek is not used by anadromous fish species to any great extent, the organic material which is produced, processed and exported from Ware Creek wetlands creates a direct ecosystem linkage to the downstream wetlands, the York River system and the Chesapeake Bay.

D. Proceedings to Date

During the first half of 1981 a series of meetings were held between representatives of James City County, their consultants and relevant Federal and State agencies to evaluate proposals to impound Ware Creek for a water supply reservoir. Since the proposed plan would have significant environmental impacts and because a

CWA Section 404 permit issued for the project would institute a major Federal action, all of the Federal agencies involved concluded that an Environmental Impact Statement (EIS) would be required in accordance with the National Environmental Policy Act (NEPA; 40 CFR Part 1500).

After considerable consultation, field evaluation and study, a Draft Environmental Impact Statement (DEIS) was written and released by the Norfolk District, Corps of Engineers in July 1985. The EPA reviewed the document and rated it EU–3 (Environmentally Unsatisfactory, Inadequate Information). The primary basis for the rating of the DEIS was that EPA believes the adverse environmental impacts associated with the proposed project are severe and had not been adequately minimized, and that the full range of feasible water supply alternatives had not been adequately investigated or fully discussed in the document. In view of the inadequacies of the document, EPA concluded by recommending that a supplement to the DEIS be prepared to address the outstanding issue.

The Corps of Engineers determined that preparation of a supplemental DEIS was not necessary. In proceeding with final EIS (FEIS) preparation, the Corps enlisted three Federal Agencies (EPA, Fish and Wildlife Service, National Marine Fisheries Service) to serve as cooperating agencies to address questions which were raised during the DEIS review.

Considerable effort was subsequently expended to inventory and classify the biological communities of the basin, to evaluate the current habitat value and potential impacts through the Habitat Evaluation Procedures (HEP), and to investigate mitigative measures and alternatives to the proposed plan.

In September, 1987 the Corps of Engineers issued the FEIS. The recommended alternative remained essentially the same although measures to mitigate the environmental impacts were expanded. The environmental conditions and impacts were described in more detail and several alternatives were discussed more fully. On November 23, 1987, in formal comments on the FEIS, EPA found that the FEIS preferred alternative, construction of the Ware Creek impoundment, was environmentally unsatisfactory, mitigative matters were inadequate and alternatives had not been adequately addressed. Those comments also stated that EPA was considerating the CWA section 404(c) option. EPA recommended to the Corps that the Ware Creek permit be denied and that all concerned Federal, State and local parties work together toward a viable, environmentally satisfactory comprehensive water-supply solution.

On July 11, 1988 the Corps of Engineers issued a notice of intent to issue the permit for the proposed Ware Creek reservoir. In response to that notice, EPA informed the District Engineer on August 5, 1988 that it was initiating a section 404(c) action. During the following 15 day period, no information was received which demonstrated to the satisfaction of the Regional Administrator that no unacceptable adverse effects would occur and the District Engineer did not notify the Regional Administrator of his intent to take corrective action to prevent an unacceptable adverse effect. EPA proceeded to prepare the public notice which is published herewith.

Before and after EPA's initiation of this section 404(c) action, efforts have been made by the project proponent to minimize the environmental impacts of the Ware Creek impoundment. Informal proposals included acquisition and/or enhancement of off-site wetlands. Formal proposals include construction of wetlands in tributary branches of Ware Creek by the use of check dams. The primary mitigation effort is a proposal to breach a dam on Yarmouth Creek to reestablish connections between upstream wetlands and the Chickahominy River. This will result in the conversion of lacustrine to palustrine habitat and create the potential for the reestablishment of an anadromous fishery in Yarmouth Creek.

Mitigation measures have fallen short in EPA's view for two reasons. First, the environmental resource values of the Ware Creek site are very high and practicably irreplaceable. Second, the use of mitigation to obtain approval for avoidable destruction of viable habitat is inappropriate.

E. Other Proceedings to Date: Regional Water Supply

In addition to the investigation of solutions to the water supply needs of James City County, other studies were conducted concerning water supply issues throughout southeastern Virginia. In December 1984 the Norfolk District, Corps of Engineers issued a feasibility report and FEIS for a Water Supply Study for Hampton Roads, Virginia. With regard to the long-term needs for the northside of Hampton Roads (including James City County) the Corps determined that a withdrawal of water from the James River above Richmond was the preferred alternative. Other alternatives involving Ware Creek were considered secondary alternatives, but rejected based upon severe adverse environmental consequences.

In addition, water supply impoundments were proposed during the 1980's for Beaverdam Swamp (Gloucester Co.), Crump Creek (Hanover Co.) and Crump's Millpond (City of Suffolk) and there were indications that other, local alternatives would likely be proposed in the future. In an effort to forestall a profusion of locally-oriented water supply solutions that would lead to unacceptable environmental impact to local watersheds and ultimately the Chesapeake Bay, EPA proceeded to investigate alternative sources of supply (e.g. reverse osmosis of brackish groundwater) and attempted to encourage regional plans which would maximize efficiency. In the case of Beaverdam Swamp, an EPA-funded study demonstrated that reverse-osmosis of groundwater was feasible. With regard to the City of Suffolk, the study provided sufficient incentive for the City to conduct their own successful pilot study for a desalination process. The City of Suffolk is proceeding with a full-scale non-conventional water treatment plant.

Other ongoing studies concerned investigations into the availability of groundwater for either conventional or nonconventional treatment. The net result of these studies is that alternatives were identified which are available to James City County and which would meet projected water supply demands without a Ware Creek reservoir. Several options (e.g. groundwater treated in several ways, a smaller but environmentally damaging 3-dam configuration) were available for unilateral County action. In addition, the need for a regional approach to solve long-term, large-scale water supply issues was demonstrated at a water supply symposium which was held on June 20, 1988, in Gloucester Point, Virginia. The symposium was jointly sponsored by the EPA, the Commonwealth of Virginia and the Corps of Engineers. EPA is of the opinion that sufficient alternatives are available to obviate the need for the environmentally unacceptable Ware Creek reservoir.

F. Basis for Proposed Determination

1. Section 404(c) Criteria. The CWA requires that exercise of the final section 404(c) authority be based on a determination of unacceptable adverse effect on municipal water supplies, shellfish beds, fisheries, wildlife or recreational areas. The regulations define "unacceptable adverse effect" in 40 CFR 231.2(e) as:

Impact on an aquatic or wetland ecosystem which is likely to result in significant degradaion of municipal water supplies or significant loss or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) Guidelines (40 CFR Part 230).

The preamble to 40 CFR Part 231 (44 FR 58078, 10/9/79) explains that one of the basic functions of section 404(c) is to oversee the application of the section 404(b)(1) Guidelines. Those portions of the Guidelines relating to the availability of less environmentally damaging practicable alternatives [40 CFR 230.10(a)], significant degradation of waters of the United States [40 CFR 230.10(c)] minimizing adverse impacts to aquatic resources [40 CFR 230.10(d)] and to the determination of cumulative effects on the aquatic ecosystem [40 CFR 230.11(g)], are of particular importance in the evaluation of the unacceptability of environmental impacts in this case.

In summary, the Regional Administrator believes that there are less environmentally damaging alternatives to the Ware Creek Reservoir, that the Ware Creek reservoir will result in significant degradation of waters of the United States, that the proposed mitigation plan is appropriate and nevertheless does not compensate for the adverse environmental impacts associated with the project and that insufficient consideration was given to potential cumulative impacts during the regulatory permit process.

2. Adverse Impacts of Permit Issuance. The proposed project will result in the destruction of 425 acres of wetlands. The balance of the habitat destruction will be in forested uplands. The proposed Ware Creek impoundment will destroy a diverse wetland-upland complex which has high fish and wildlife value and replace that with primarily an open water lacustrine habitat. In addition to the destruction caused by inundation, the processes which link much of the entire existing Ware Creek wetland system (currently 1,170 acres of wetlands and open water) will be disconnected, further reducing the existing productivity and habitat value.

As a result of project implementation, a viable heron rookery would be destroyed with the probability for an adequate replacement site currently uncertain. Information available concerning proposed project impacts indicates that the impoundment would significantly alter present fish and wildlife habitat and would result in unacceptable adverse effects to fishery areas and wildlife.

Given the state of the Chesapeake Bay and future conditions, the cumulative adverse impacts associated with this project will contribute negatively to the Bay ecology. Long term water withdrawal trends have already been identified by the Baltimore District, Corps of Engineers as a significant threat to the ecology of the Chesapeake Bay. Moreover, permit issuance would continue a process which has resulted in a loss of 63,300 acres of wetlands in Virginia from 1956–1977 (18% due to lake construction). Furthermore, during that time period, the southeastern section of Virginia (including Ware Creek) has experienced a 14% loss of inland vegetated wetlands, fully 80% of the total loss of Virginia's inland wetlands.

G. Unresolved EPA Concerns

To date, EPA has been involved in the NEPA and CWA section 404 processes for the Ware Creek project as a reviewer and cooperating agency. Agency representatives have attended numerous meetings, reviewed many relevant reports, sponsored studies to investigative alternatives, and jointly chaired a symposium to evaluate the long-term water needs of the region. A thorough review of these data has shown that viable water supply alternatives exist which would avoid the proposed impounding of Ware Creek and the destruction of the ecosystem as it is currently functioning. The project as currently proposed will cause significant degradation to wetlands.

1. Groundwater alternatives—the FEIS acknowledges that approximately 9.8 mgd of groundwater is available to the County which does not require extraordinary treatment. In addition, reverse-osmosis treatment and comparable technologies have been shown to be feasible in the EPA-sponsored study and Suffolk pilot demonstration. The U.S. Geological Survey indicates that sufficient groundwater availability is probable if well spacing and other variables are factored into the project design.

2. Regional Alternatives—the Corps' 1984 study of regional water needs identified one primary and two secondary alternatives to meet project water supply shortfalls for Northside Hampton Roads. Some of the data to verify these recommendations are lacking. In addition, pursuit of these alternatives will require substantially more participation on the part of the State of Virginia and cooperation among local jurisdictions. The current state of events is leading to conventional solutions to meet the needs of single governmental units, or at the most, small groups, of governmental bodies.

3. Significant Degradation—the project will inundate 425 acres of wetlands and adjacent aquatic habitat and will disrupt ecosystem processes which connect the existing basin communities. A heron rookery will be destroyed and a major segment of wetlands within the Ware Creek watershed itself will be disrupted or isolated. Under the best of mitigation scenerios much of the Ware Creek system will be destroyed and mitigation, much of it off-site, will still result in over a 30% loss of the average wetland-based habitat values. Given the continued loss of wetland habitat in Virginia (a significant proportion of which has been lost to lake inundation) and the value of the existing Ware Creek system, such losses are significant and unacceptable.

4. Mitigation—Substantive commitments and proposals have been made to address creation or alteration of existing wetlands to compensate for the lost functions of Ware Creek wetlands. In addition, the applicant has offered proposals to purchase easements as a means of "protecting" existing wetlands. EPA believes that such actions are inappropriate because they do not address the least environmentally damaging alternative and inadequate because they do not replace the wetland functions that will be lost with construction of the project as proposed.

For Further Information Contact: Ms. Barbara D'Angelo, Environmental Assessment Branch (3ES40), U.S. Environmental Protection Agency, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9301.

James M. Seif,

Regional Administrator, Region III.

[FR Doc. 88–26727 Filed 11–17–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Existing collection in use without an OMB control number.

Title: CAC and CAV Forms on the Effectiveness of a Community Implementation of the NFIP.

Abstract: National Flood Insurance Program communities provide States and FEMA information on their implementation of the NFIP at least every five years. States, funded under the NFIP's Community Assistance Program, provide this information to FEMA in order to assess the effectiveness of a community's NFIP implementation. Information submitted within 30 days.

Type of Respondents: State or local governments, Federal agencies or employees.

Estimate of Total Annual Reporting and Recordkeeping Burden: 5,050.

Number of Respondents: 1

Estimated average burden hours per response:

Frequency of response: Other: Once every 5 years on the part of the community.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: November 9, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–26710 Filed 11–17–88; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submited to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Reinstatement of a previously approved collection for which approval has expired.

Title: FEMA Nuclear Power Plant Alert and Notification System: Public Telephone Survey.

Abstract: The Federal Emergency Management Agency shall randomly telephone survey the residents within the Emergency Planning Zone (EPZ) of 4 nuclear power plans as stipulated in Appendix 3 of NUREG 0654/FEMA–REP–1, Rev. 1. From an approximate sample of 2,500 households, between 250 and 385 residences will be voluntarily surveyed following the attached standardized questionnaire.

Type of respondents: Individuals or households.

Estimate of total annual reporting and recordkeeping burden: 58.

Number of respondents: 4.

Estimated average burden hours per response: .008.

Frequency of response: Once per survey.

Copies of the information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: November 3, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–26711 Filed 11–17–88; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007590–050.

Title: United States/Colombia Conference.

Parties:

Flota Mercante Grancolombia, S.A.
Lykes Bros. Steamship Co., Inc.
CTMT, Inc.

Synopsis: The proposed modification would reduce the number of days from 5 to 3 a member has to respond to a telephone poll concerning northbound cargo. The parties have requested a shortened review period.

Agreement No.: 202–010776–038.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Lines, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed modification would prohibit any party, either individually or jointly with any other carrier or carriers, from entering into an individual loyalty contract in the agreement trade. It would also prohibit any party from taking independent action with respect to loyalty contracts.

Agreement No.: 212–011213–001.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Nordana Line AS
Sea-Land Service, Inc.

Synopsis: The proposed modification would revise the formula to which initial cash payments are made to the Pool Operating Fund by the members.

By Order of the Federal Maritime Commission.

Dated: November 15, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–26675 Filed 11–17–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank of Boston Corp.; Acquisition of Company Engaged in Permissable Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissable for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. **Bank of Boston Corporation,** Boston, Massaschusetts; to acquire First Union Commercial Corporation, Charlotte, North Carolina, and thereby engage in factoring activities pursuant to § 225.25(b)(1)(v) of the Board's Regulation Y. These activities will be conducted on a worldwide basis.

Board of Governors of the Federal Reserve System, November 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-26604 Filed 11-17-88; 8:45 am]

BILLING CODE 6210-01-M

The Bank of Nova Scotia et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of Nova Scotia,* Toronto, Canada; to expand the existing authority of its subsidiary, ScotiaMcLeod (USA) Inc., New York, New York, to engage in securities brokerage activities to include the incidental securities credit activities pursuant to Regulation T as specified in § 225.25(b)(15) of the Board's Regulation Y.

2. *The Hongkong and Shanghai Banking Corporation,* Hong Kong, HSBC Holdings, B.V., Amsterdam, The Netherlands; Kellett N.V., Curacao, Netherlands Antilles; and Marine Midland Banks, Inc., Buffalo, New York; to engage *de novo* through its subsidiary, Kidde Credit Corporation, in equipment financing, including lease financing and conditional sale contract financing pursuant to §§ 225.25(b)(1 and 225.25(b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Cortland Bancorp.,* Courtland, Ohio; to engage *de novo* through its subsidiary, New Resources Leasing Co., Cortland, Ohio, in leasing personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in Eastern Portage, Southern Ashtabula County and all of Trumbull County, Ohio.

Board of Governors of the Federal Reserve System, November 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-26684 Filed 11-17-88; 8:45 am]

BILLING CODE 6210-10-M

China Trust Holdings, N.V., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set froth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 7, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. **China Trust Holdings, N.V.,** Curacao, The Netherlands Antilles, China Trust Capital B.V., The Netherlands, and China Trust Holdings Corp., New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of China

Trust Bank, New York, New York, a *de novo* bank.

B. **Federal Reserve Bank of Richmond.** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. **Mountain-Valley Bancshares, Inc.,** Parsons, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Parsons, Parsons, West Virginia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. **Panhandle Aviation, Inc.,** Clarinda, Iowa; to acquire 86.33 percent of the voting shares of Humboldt Trust & Savings Bank, Humboldt, Iowa.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis Missouri 63166:

1. **Baxter County Bancshares, Inc.,** Mountain Home, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Peoples Bank Corporation, Mountain Home, Arkansas, and thereby indirectly acquire Peoples Bank and Trust Company, Mountian Home, Arkansas.

2. **State Bancshares, Inc.,** Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Southwest Missouri, Springfield, Missouri.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. **First Dakota Financial Corporation,** Yankton, South Dakota; to become a bank holding company by acquiring 96.29 percent of the voting shares of First Dakota National Bank, Yankton, South Dakota.

Board of Governors of the Federal Reserve System, November 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-26686 Filed 11-17-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Dennis H. White et al.

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and §225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 2, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dennis H. White,* Valley City, North Dakota; to acquire 4.76 percent of the voting shares of First Bancshares of Valley City, Inc., Valley City, North Dakota, and thereby indirectly acquire First National Bank, Valley City, North Dakota.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Cyr Family Trust,* to acquire 37.54 percent of the voting shares of United Kansas Bank Group, Inc., Merriam, Kansas, and thereby indirectly acquire United Kansas Bank & Trust, Merriam, Kansas.

2. *Luther C. Graham,* Sand Springs, Oklahoma; to acquire an additional 1.26 percent of the voting shares of Limestone Bancshares, Inc., Sand Springs, Oklahoma, and thereby indirectly acquire Lime Stone National Bank, Sand Springs, Oklahoma.

3. *M. L. and Jamie Wooldridge,* to acquire an additional 11.27 percent; M. L. Wooldridge—IRA, to acquire 4.87 percent; and Jamie Wooldridge—IRA, all of Carrollton, Missouri, to acquire 2.08 percent of the voting shares of First Carrollton Bancshares, Inc., Carrollton, Missouri, and thereby indirectly acquire First National Bank of Carrollton, Carrollton, Missouri.

Board of Governors of the Federal Reserve System, November 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-26683 Filed 11-17-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following is submitted to OMB since the last list was published on November 4, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package.)

1. Budget Summary and Certification—0960-0422—The information is used by SSA to budget for funds to sustain the State Disability Determination Staff (DDS). Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: 1; Average Burden per response: 30 minutes; Estimated Annual Burden: 27 hours.

2. Physicians/Medical Officer's Statement (Patient's Capability to Manage Benefits)—0960-0024—The information collected by the SSA-787 is used by the Social Security Administration to help determine an individual's capability to handle his or her own benefits. Respondents: Businesses or other for-profit; Number of Respondents: 120,000; Frequency of Response: On occasion; Average burden per response: 5 minutes; Estimated Annual Burden: 10,000 hours.

OMB Desk Officer: Justin Kopca.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package.)

1. Medicaid Management Information System—0938-0458—The implementation of these hospital billing requirements will enable the Medicaid program to develop meaningful data for use by the Federal Government in order to reduce medical care costs. These required data are needed to make the States' Management Information Systems more compatible with systems used to administer the Medicare program, which will further reduce costs and burden on the provider community. Respondents: State and local governments, Businesses or other for-profit, Non-profit institutions; Number of Respondents: 58,000,000; Frequency of Response: 1; Average burden per response: 5-9 minutes; Estimated Annual Burden: 6,236,000 hours.

OMB Desk Officer: Allison Herron.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package.)

1. Product License Application for the Manufacture of Source Plasma—0910-0040—These reports are mandated by

Section 351 of the Public Health Service Act; the Federal Food, Drug and Cosmetic Act, Sections 502 and 505; and Title 21 CFR Part 600.—"No license may be granted unless this completed application has been received." Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

	1st Collection Title: Product License Application Manuf. of Source Plasma/ Reporting.	2nd Collection Title: Product License Application for Manuf. of Source Plasma/Record-Keeping
Recordkeeping		
Number of Responses	100	365
Frequency of Response	2	1
Average Burden	2	40
Total Annual Burden: 15,000 Re-porting.		

2. Blood Establishment Registration and Product Listing—0910–0052—Information requested is necessary to ensure Agency inspection and regulation of all blood establishments collecting, processing, storing, and distributing blood and blood products. Information also provides list for mailing important public health recommendations concerning AIDS, bio-safety, etc., and indicates industry trends in product development and manufacture. Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations; Number of Respondents: 2500; Number of Responses per response: 1; Average burden per response: 30 min.—new report and 15 min.—subsequent reports; Estimated Annual Burden: 675 hours.

3. Transmittal of Labels and Circulars—0910–0039—Labels and circulars for biological products must be reviewed and approved by the Office of Biologies Research and Review prior to marketing of the licensed product. Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations; Number of Respondents: 469; Frequency of Response: 7; Average Burden per response: 10 minutes; Estimated Annual Burden: 547 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: November 9, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88–26450 Filed 11–17–88; 8:45 am]

BILLING CODE 4150–04–M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on November 4, 1988.

Social Security Administration

(Call Reports Clearance Office on 301–965–4149 for copies of package.)

1. State Mental Institution Policy Review—0960–0110—The information is needed to determine whether an institution's policies conform to the Social Security Administration's regulations on the use of benefits. Respondents: Non-profit institutions; Number of Respondents: 183; Frequency of Response: 1; Average burden per response: 1; Estimated Annual Burden: 183 hours.

OMB Desk Officer: Justin Kopca.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package.)

1. Medical Device Registration—0910–0060—Section 510(b) of the Food Drug and Cosmetic Act requires manufacturers and certain other persons engaged in distribution of medical devices to annually register the location of their manufacturing facility. This information is used by the Food and Drug Administration (FDA) to identify establishments subject to regulation by the Agency. In addition, registration information is linked to data collected by the medical device listing enabling FDA to ensure that medical devices were manufactured in accordance with good manufacturing practices. Respondents: Businesses or other for-profit; Small businesses or organizations; Number of Respondents: 9,000; Number of Responses: 1; Average burden per response: .17; Estimated Annual Burden: 1,530 hours.

2. Food Canning Establishment Registration and Process Filing—NEW—The information will provide FDA with Data needed for Review and Evaluation of processes for acidified/thermally processed low-acid canned foods. This information will permit FDA to exercise better control and appreciably increase assurance that safe practices are being followed by the processors. The following reflects the breakdown of the burden associated with this information collection. Respondents: Businesses or other for-profit, Small businesses or organizations.

	No. of respond-ents	No. of hrs. per response	No. of responses per respond-ent
Forms FDA 2541 (Registra-tion)	300	0.17	1
Form FDA 2541a (Process Filing)	1,200	0.333	4.16
Form FDA 2541c (Process Filing)	1,200	0.75	.42
Total annual burden	2,090		

OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–1238 for copies of package.)

1. Freestanding Federally—Funded Health Center Cost Report—0938–0235—This standard cost report is used by Federally funded health centers that are freestanding to determine their rate of payment under the medicare program. Respondents: Businesses or other for-profit, Non-profit institutions; Number of Respondents: 145; Frequency of

Response: 3; Average burden per response: 18; Estimated Annual Burden: 7,830 hours.

OMB Desk Officer: Allison Herron.

Family Support Administration

(Call Reports Clearance Officer on 202–252–5605 for copies of package.)

1. Reporting and Recordkeeping for the Refugee Program—0970—0059—Maintenance of such records is necessary to ensure compliance with legislative requirements, accurate reporting and effective program monitoring. Respondents: State or local governments; Number of Respondents: 51; Frequency of Response: 1; Average burden per response: 1; Estimated Reporting Burden: 51 hours; Estimated Recordkeeping Burden: 11,904 hours; Total Burden Hours: 11,955.

OMB Desk Officer: Justin Kopca.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: November 9, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88–26451 Filed 11–17–88; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, chaired by John Feldman, District Director. The topics to be discussed are cholesterol labeling, salmonella in eggs, sulfites, and tampon labeling.

DATE: Monday, November 28, 1988, 10 a.m. to 12 m.

ADDRESS: Mount Mary College, Caroline Hall, Multipurpose Room, Milwaukee, WI 53222.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–334–4103.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 14, 1988.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–26681 Filed 11–17–88; 8:45 am]

BILLING CODE 4160–01–M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming small business exchange meeting to be chaired by Edward J. McDonnell, Director, Boston District Office. The topic to be discussed is small business relationships with FDA.

DATE: The meeting will be held on Thursday, December 8, 1988, 1 p.m. to 4:30 p.m.

ADDRESS: The meeting will be held at the Department of Transportation, Transportation Systems Center Auditorium, 55 Broadway Kendall Sq., Cambridge, MA 11232.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Small Business Assistance Program (HFR–NE17), Food and Drug Administration, 830 Third Ave., Brooklyn, NY 11232, 718–965–5528.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small business and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, and increase participation by small business persons in FDA's decisionmaking process. The meeting will also allow FDA to convey knowledge about the agency's operations and procedures to owners and operators of small businesses and answer any questions.

Dated: November 14, 1988.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–26682 Filed 11–17–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, December 5–6, 1988, Building 31C, Conference Room 6, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. The entire Board meeting and meetings of its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and rosters of the Board members, upon request.

Name of Committee: Subcommittee on Cancer Centers.

Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301/496–5515).

Date of Meeting: December 5.

Place of Meeting: Building 31C, Conference Room 6.

Open: Immediately following adjournment of NCAB.

Agenda: A continuation of ongoing reviews of Cancer Centers Program.

Name of Committee: Subcommittee on Minority Manpower Development.

Executive Secretary: Dr. Vincent Cairoli, Executive Plaza North, Room 232, Rockville, MD 20892 (301/496–8580).

Date of Meeting: December 5.

Place of Meeting: Building 31C, Conference Room 6.

Open: 6 p.m. to adjournment.

Agenda: To establish guidelines for the Subcommittee and consider plans for implementation of the NIH policy regarding recruitment of minority trainees on institutional training grants.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Ms. Barbara Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496–5147).

Date of Meeting: December 5 and 6.

Place of Meeting: Building 31C, Conference Room 6.

Open: December 5, 8:30 a.m. to recess, December 6, 8:30 a.m. to adjournment.

Agenda: Reports on activities of the President's Cancer Panel; the Acting Director's Remarks on the National Cancer Institute; Program Review of the NCI Divisions; Subcommittee Reports; and New Business.

Dated: November 15, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-26764 Filed 11-17-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung and Blood Institute; Meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung and Blood Institute, January 30-31, 1989, Building 31, Conference Room 9, C-Wing, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from approximately 8:30 a.m. to 5:00 p.m. on Monday, January 30, and from 8:30 a.m. to adjournment on Tuesday, January 31, to evaluate program support in arteriosclerosis, hypertension and lipid metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4235, will provide a summary of the meeting and a roster of the committee members.

Dr. G.C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C12, Federal Building, national Institutes of Health, Bethesda, MD 20892, (301) 496-1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 9, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-26670 Filed 11-17-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Diabetes Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be December 12, 1988. The meeting will begin at 8:30 a.m. and end at approximately 4:30 p.m. The Board will meet at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: November 9, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88-26671 Filed 11-17-88; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Advisory Committee; Definitions Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee—Definitions Subcommittee at the National Institutes of Health, Building 31, Room 2A52, Bethesda, Maryland 20892, on December 5, 1988, from approximately 9:00 a.m. to adjournment at approximately 12:00 noon to discuss the definition of "recombinant DNA" under the NIH Guidelines for Research Involving Recombinant DNA Molecules. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Mr. Robert J. Crawford, Executive Secretary, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room B1C34, Bethesda, Maryland 20892, telephone (301) 496-9838.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official governments 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.

Dated: November 10, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-26672 Filed 11-17-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Delegation of Authority to the Administrator, Health Resources and Services Administration

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 14, 1981 (46 FR 10016) by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated all of the authorities under section 315 of the Public Health Service Act, as amended, pertaining to the Grants for Treatment Drugs for Acquired Immune Deficiency Syndrome, to the Administrator, Health Resources and Services Administration, with authority to redelegate.

Redelegation: These authorities may be redelegated.

Effective Date: This delegation became effective on November 8, 1988.

Date: November 8, 1988.

Robert E. Windom,

Assistant Secretary for Health.

FR Doc. 88-26676 Filed 11-17-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1892]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act.

ADDRESS: Interested persons who wish to submit comments regarding the paperwork request, may do so. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: November 4, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Approval of a Budget Work Sheet and Rent Increase Spreadsheet for Use in Calculating Rent Increases for Certain of HUD's Subsidized and Direct Loan Projects.

Office: Office of the Assistant Secretary of Housing-Federal Housing Commissioner.

Description of the need for the information and its proposed use: The budget worksheet provides current expense levels and owner estimates of future expenses to be used in HUD's automated system to calculate rent increases. The spread sheet provides the project owner's current rent structure and his requested rent levels which HUD will review, and if appropriate, will approve. The owners are required, by legislation and by regulation, to obtain HUD approval for said rent increases.

Form Number: Two forms (unnumbered) Budget Worksheet, Rent Increase Spread Sheet.

Respondents: HUD Projects Owner or Management Agents.

Frequency: Annually when requesting a rent increase.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Budget worksheet	12,500		1		2		25,000
Spread sheet	1,500		1		½		750

Total Estimated Burden Hours: 25,750

Status: Revision

Contact: James Tahash, (202) 426-3944
John Allison, OMB, (202) 395-6880

Date: November 4, 1988.

Supporting Statement Requesting OMB Approval of the Budget Worksheet and Rent Increase Spread Sheet

Part A

Justification

Background. Owners of all cooperative and subsidized rental projects not adjusting rents using the Section 8 Annual Adjustment Factor must submit the Budget Worksheet and the Spread Sheet as a part of the rent increase request. Said project owners are required, by legislation and regulations, to obtain HUD approval for rent increases.

1. In return for our insuring, subsidizing or making direct loans for project mortgages, owners agree to: (1) Let HUD regulate rents; (2) purchase goods and services on terms most advantageous to the project; and (3) assure that project expenses are reasonable. Tying rents to costs helps HUD assure that rent levels and related Federal subsidy outlays are not higher than needed to support operations and to pay a reasonable return on the owner's investment. HUD's authority to require owners to submit documentation supporting a rental increase request are contained in Pub. L. 479, 48 Stat. 1246, Sect. 207 and 24 CFR 207.19. Attachments include a copy of the worksheet and the spread sheet.

2. Worksheet: Project owners enter actual operating expenses on the Budget Worksheet and project the increase or decrease in expenses expected during the next 12 month period. Consideration of historical operating costs is the best starting point for estimating future expense levels. In support of the estimated expenses, owners must also attach a brief narrative to the Worksheet explaining how each expense estimate was derived where it exceeds 5 percent. A sample owner explanation is included in this package. Field Staff assess the reasonableness of estimated expenses using line by line guidance provided by Headquarters then, calculate the project's rent potential and spread the rent potential by bedroom size

Without the worksheet, HUD would be unable to carry out the regulation which authorizes use of anticipated expenses for setting project rents. Establishing rents based on expected expense levels helps assure that: (1) HUD tenant assistance outlays are no higher than necessary; and (2) rents are sufficient to cover ongoing expenses and project debt service. Insufficient rent potential could result in mortgage assignments costing the government millions of dollars in mortgage insurance claims.

Spread Sheet: Project owners enter information on current unit sizes, current rents and utility allowances and requested rent increase levels on the spread sheet. This basic information along with the projections on the worksheet is required to calculate the nature of any rent increase.

3. We encourage the use of automated accounting systems when the cost of the system is less than the cost of hiring a project bookkeeper. Many management agents now use privately developed software packages adapted to the HUD Chart of Accounts. These systems significantly reduce the time needed to establish amounts included on the Budget Worksheet. Some automated systems also compare actual project expenses against monthly budget expense projections. This information is useful to owners when estimating expense levels on the worksheet. Field Offices may accept automated reports in lieu of the Worksheet or the Spread Sheet as long as the entries are grouped in the categories used in the respective forms and the owner clearly identifies which accounts are included on each line.

4. The requirements for the information on these forms are not duplicated by requirements imposed by other regulatory or State and local governments.

5. Worksheet: Estimated project expenses and rent potential spread shown on the HUD-worksheet is not available to HUD from other sources. The information must be derived or estimated from project books and records kept by the owner. Only the owner can provide this information because he/she is most aware of inflationary increases in project expense levels or increases in service contracts executed on behalf of the project.

Spread Sheet: The estimated rent potential shown on the Spread Sheet is not available to HUD from other sources. As in the case of the worksheet the information must be estimated from project books and records kept by the owner. The owner is the sole best source of this information.

6. No small business or other small entities are involved in this information collection.

7. Information is collected only when the owner requests a rental increase. Without the Worksheet or the Spread Sheet HUD would be less able to consider the owner's input in rent increase processing. Project rents may be set at inflated levels resulting in excessive subsidy outlays or at insufficient levels potentially resulting in a mortgage assignment.

It should be noted that information is collected on the Spread Sheet only when the owner requests a rental increase and the project is not subject to tenant participation requirements of 24 CFR Part 245. Thus the Spread Sheet is not required in every case that the Budget Worksheet is required.

8. Information collection is conducted in a manner consistent with the guidelines of 5 CFR 1320.6.

9. Over the past several years, we have been discussing with the housing industry and HUD Field Offices how we could improve rent increase processing procedures for subsidized and cooperative projects. In a previous submission (1987) for the OMB approval of the form HUD–92457B we mentioned some of industry contacts we made to discuss rent increase processing. All of these representatives supported the new forward budget approach and the automated calculation of rents. They appreciated the need to gather expense data projections from project owners.

In addition to contacts made in 1987 (see below) the Department is carrying on continuing discussions with the National Association of HUD Management Agents, The National Corporation of Housing Partnerships and The National Housing Partnership.

Dan Grady, Monfric, Inc., 1915 Morena Blvd, San Diego, CA 92110, (619) 276–6271.

Barron Rush, CPM, Barron Builders and Management Company, 18333 Egret Bay Blvd, Suite 680, Houston, Texas 77058, (713) 333–5211.

Charles A. Achilles, Vice President, Institute of Real Estate Management, 430 N. Michigan Ave., Chicago, IL 60611, (312) 661–1930.

10. We do not assure confidentiality to respondents.

11. Neither the Worksheet nor the Spread Sheet include questions of a sensitive nature.

12/13. Estimated Annualized Cost of Form to the Federal Government and Respondents:

Total estimated annual cost to the Federal Government: $292,500 ($281,250+$11,250)

Total estimated annual cost to Respondents: $336,813 ($325,938+$10,875). See breakdown below.

RENT INCREASE BUDGET WORKSHEET

Program type	Number of respondents	×	Frequency of response	×	Hourly rate [1]	Hours per statement
Cooperatives	1,135		1		15.00	1½
Subsidized (except sec. 8)	9,600		1		15.00	1½
Section 202	1,600		1		15.00	1½
Other elderly	165		1		15.00	1½
Total respondents	12,500					

[1] Above figure assumes a GS–11–5 Loan Servicer reviews owner's estimates of expenses on the Worksheet and calculates approved project rent potential.

Estimated annual costs to the Federal government: $281,250

Estimated Annual Costs to Respondents:

	Number of respondents	×	Frequency of response	×	Hourly rate [1]	×	Hours per statement
Project bookkeeper	12,500		1		8.65		½
Project manager	12,500		1		14.50		1½

Estimated Annual Costs to Respondents: $325,938.
[1] Above figures assume that the: (1) Project bookkeeper with an annual salary of $18,000 prepares amounts in Column 1 and 2 of the Worksheet; and (2) property manager with an annual salary of $30,000 prepares estimates of expenses in Column 3 supported by any necessary justification for increases in expense line items. A review of our files indicates that our current estimates 12,500 responses/25,000 burden hours are accurate.

RENT INCREASE SPREAD SHEET

Number of respondents	Frequency of Response	×	Hourly Rate [1]	×	Hours per statement
1,500	1		15.00		½

Estimated annual costs to the Federal government: $11,250.
[1] Above figure assumes a GS-11-5 Loan Servicer reviews owners's estimates on the Spread Sheet and calculates approved project rent potential.

Estimated Annual Costs to Respondents:

	Number of respondents	×	Frequency of response	×	Hourly rate [1]	×	Hours per statement
Project manager	1,500		1		14.50		½

Estimated Annual Costs to Respondents: $10,875.
[1] Above figures assume that the property manager with an annual salary of $30,000 prepares estimates.

14. The Rent Increase Budget Worksheet and the Rent Increase Spread Sheet will be used to implement the Department's policy of basing rent increases on estimated future expenses. This method replaces the previous policy and the form which it utilized. Specifically, HUD form 92457B (OMB Control # 2502-0324) will no longer be used to process rent increases for the projects effected by the new approach. Therefore, the approval of these forms represents a net reduction in paperwork burden hours for those projects.

Previous burden hours approved for the HUD 92457B: 50,000
Requested total burden hours for the new Worksheet and Spread Sheet: 25,750
Net reduction in hours: 24,250
Annual cost to the Federal Government for the HUD 92457B: $412,500
Net reduction in cost for the new forms: $120,000
Annual cost to respondents for the HUD 92457B: $651,875
Net reduction in cost for respondents with the new forms: $315,062

15. HUD does not publish any of the project expense data or rent potential included on these forms.

Part B

Collection of Information Employing Statistical Methods. The collection of information on the Work Sheet and Spreadsheet does not employ statistical methods.

DRAFT

RENT SPREAD SHEET

Project Name..... FHA #
Management Agent..... % Fee
Fee Capped (Y/N)
PUPM

RENT STRUCTURE

Current potential—			Requested monthly potential—		
Unit type	Current unit rents	Utility allowance	Number units	Proposed unit rents	Proposed utility Allowance

BILLING CODE 4210-01-M

DRAFT

4350.1 CHG-49

CHAPTER 7 APPENDIX 4

BUDGET WORKSHEET

Income and Expense Projections				
Project No. Name of Project				
Description of Account	Acct. No.	HUD-92410 Audited - Last FY	Current FY FY #MOs.	Budget - From / / To / /
Rental Income 5100				
Apartments or Member Carrying Charges (Coops)	5120			
Tenant Assistance Payments	5121			
Furniture and Equipment	5130			
Stores and Commercial	5140			
Garage and Parking Spaces	5170			
Flexible Subsidy Income	5180			
Miscellaneous (specify)	5190			
Total Rent Revenue Potential at 100% Occpancy				
Vacancies - 5200				
Apartments	5220			
Furniture and Equipment	5230			
Stores and Commercial	5240			
Garage and Parking Spaces	5270			
Miscellaneous (specify)	5290			
Total Vacancies				
Net Rental Rent Revenue Less Vacancies				
Elderly and Congregate Services Income - 5300†	5300			
Total Services Income † (Schedule Attached)-	5300			
Financial Revenue- 5400				
Interest Income-Project Operations	5410			

Income from Investments -Residual Receipts	5430			
Income from Investments Reserve for Replacement	5440			
Income from Investments Miscellaneous	5490			
Total Financial Revenue				
Other Revenue - 5900				
Laundry and Vending	5910			
NSF and Late Charges	5920			
Damages and Cleaning Fees	5930			
Forfeited Tenant Security Deposits	5940			
Other Revenue (specify)	5990			
Total Other Revenue				
Total Revenue				
Administrative Expenses 6200/6300				
Advertising	6210			
Other Renting Expense	6250			
Office Salaries	6310			
Office Supplies	6311			
Office or Model Apartment Rent	6312			
Management Fee	6320			
Manager or Superintendent Salaries	6330			
Manager or Superintendent Rent Free Unit	6331			
Legal Expenses(project)	6340			
Auditing Expenses (Project)	6350			
Bookkeeping Fees/Accounting Services	6351			
Telephone and Answering Service	6360			

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CHAPTER 7 APPENDIX 4(e)

Bad Debts	6370			
Miscellaneous Administrative Expense specify	6390			
Total Administrative Expenses				
Utilities				
Fuel Oil Coal - 6400	6420			
Electricity	6450			
Water	6451			
Gas	6452			
Sewer	6453			
Total Utilities Expense				
Operating and Maintenance Exp - 6500				
Janitor and Cleaning Payroll	6510			
Janitor and Cleaning Supplies	6515			
Janitor Cleaning Contracts	6517			
Exterminating Payroll Contract	6519			
Exterminating Supplies	6520			
Garbage and Trash Removal	6525			
Security Payroll/ Contract	6530			
Flexible Grounds Payrol	6535			
Grounds Supplies	6536			
Grounds Contract	6537			
Total Repairs Payroll	6540			
Repairs Material	6541			
Repairs Contract	6542			
Elevator Maintenance/ Contract	6545			

Heating/Cooling Repairs and Maintenance	6546			
Swimming Pool Maintenance/ Contract	6547			
Snow Removal	6548			
Decorating Payroll/ Contract	6560			
Decorating Supplies	6561			
Vehicle & Maint. Equip Operations and Repairs	6570			
Miscellaneous Operating Maintenance Expenses	6590			
Taxes and Insurance - 6700				
Real Estates Taxes Interest	6710			
Payroll Taxes (FICA)	6711			
Miscellaneous Taxes, License and Permits	6719			
Property and Liability Insurance (hazzard)	6720			
Fidelity Blood Insurance	6721			
Workmen's Compensation	6722			
Health Insurance & Other Employee Benefits	6723			
Other Insurance specify	6729			
Total Taxes and Insurance				
Financial Expenses 6300				
Interest on Bonds Payable	6810			
Interest on Mortgagee Payable	6820			
Interest on Notes Payable (Long-Term) *	6830			
Interest on Notes Payable (Short-Term) *	6840			
Mortgage Insurance Premium/Service Charge	6850			
Miscellaneous Financial Expenses	6890			
Total Financial Expense				
Elderly and Congregate Service Expenses-6900	6900			
Total Service Expenses Schedule Attached				
Reserve for Replacement Dep. Req.				
Painting Reserve				
Principal Payments Req.				
Debt Service on Sec 241 and Other Approved loans				
Debt Service Reserve (202)				
General Operating Reserve	(GOR)			
Excess (Deficiency) Income over expenses				
Total Cost of Operation				

* HUD approved Secondary Financing only for Budget Projections

BILLING CODE 4210-01-C

HANDBOOK NO.: 4350.1

Draft Transmittal

Special Attention of: Regional Administrators, Regional Housing Commissioner, Directors of Regional Housing, Managers, Category A and B Offices, Directors of Housing Management Division, Loan Management Branch Chiefs, Assisted Housing Management Branch Chiefs, PHA Contract Administrators, State Agencies and Owners and Management Agents and Resident Managers of Projects Covered by this Handbook.

1. *This Transmits* A New Chapter 7 to Handbook 4350.1 Insured Project Servicing Handbook.

2. *Explanation of Materials Transmitted.* This revises procedures for the processing of rent increases and fees for commercial space and services in insured, direct loan and non-regulated HUD projects. The new Chapter 7 replaces Chapter 4, Section 3, Rents and carrying charges, which is now reserved. The new chapter incorporates:

a. The budget method for the calculation and processing of rent increases rather than the formula method previously used. It introduces such new forms and procedures, as are necessary to the processing of rents under the new methodology.

b. The application and processing for projects subject to the alternative rent mechanism explained in HUD notice 84–12.

c. All changes made in the regulations affecting decontrol of rents, including the application of Section 425 of the Housing Act of 1987.

d. Procedures and practices which allow for the systematic application of MIPS programs to the rent increase process.

e. The contents of certain notices affecting rent increases including: HM 75–61 (10/9/75); HM 75–14 (3/3/75); H 76–131 (12/2/76) and H 79–107 (11/13/79).

3. Also enclosed are Table of Contents pages for Chapters 8, 9, 10, 11, and 12

4. Effective date: upon receipt

5. Filing instructions:

Remove	Insert
Handbook 4350.1, Chapter 4, Section 3 pages 1 through 24 and appendices.	Chapter 4, Section 3 RESERVED, page 1 Handbook 4350.1 Chapter 7, pages 1 through 38 plus appendices, dated _____
Table of Contents, page iii and vi, dated 2/80.	Table of Contents, page iii, dated _____ and page vi, dated 2/80
Table of Contents, page xi, dated 6/88.	Table of Contents, pages xi, xii, xiii, xiv, xv, and xvi dated _____

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

Chapter 4. General Mortgage Servicing

Section 3. Reserved

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Chapter 7. Processing Budgeted Rent Increases and Fees for Commercial Space and Services in Insured, Direct Loan and Non-regulated HUD projects

Section 1. Overview

1. *Purpose.* This chapter provides procedures for processing budgeted rent increases in certain HUD projects and outlines guidance in the calculation of utility allowances and charges for commercial facilities and services provided in those projects. Included in the chapter are the relevant tenant participation procedures which must be followed in processing these increases and charges. In preparing the procedures in this chapter, HUD's prime interest is in promoting the efficient management and continued financial viability of its projects. In reviewing requests from owners concerning rents and charges, the Field Office should be guided by the fact that these rents and fees should and must provide sufficient and adequate funding to operate the projects. This chapter gives guidance on program evaluation used in conjunction with required procedures for MIPS budgeted rent increases.

2. *Applicability.* These procedures for processing a gross potential rent increase, increases in charges for commercial space and charges for services apply to the projects listed below:

A. Section 231, 232 and 221(d)(3) market rate projects: 231 projects (LDs) whose rents are still controlled or who have opted for the alternate rent mechanism.

B. Section 202 projects, except those that use the Section 8 Annual Adjustment Factor (AAF).

C. Section 213, Section 236 (including cooperatives), Rent Supplement, 221(d)(3) market rate and 221(d)(3) BMIR rental and cooperative projects, Sections 810 and 908 (military housing);

D. Projects that have converted from Rent Supplement to Section 8 Loan Management Set-Aside;

E. Previously HUD-owned projects that have been sold to nonprofit owners or that use a budget (rather than the Section 8 AAF) to compute rents;

F. Section 207's and 231's both regulated and controlled by alternative rent mechanism; Section 220 and 221(d)(4)'s that are regulated; and 234 rentals that did not convert to condominiums;

G. Those projects listed in paragraph 2(A) through (F) that are not automatically preempted by HUD and request exemption from local rent control.

Note: Regulatory agreements require Section 202, Section 231 and cooperative projects to *annually* submit operating budgets and obtain HUD approval of rents or carrying charges. Field Offices shall enforce this requirement in lieu of the requirement that budgets be submitted only when the owner believes a rent increase is needed.

The Field Office in enforcing the regulatory agreement requirement for annual budget submissions, shall require the owner to include in their submission any information required by Section 4, paragraph 2 of these procedures.

3. *Projects Subject to the Alternate Rent Determination Mechanism.*

For projects insured under Section 207, 231(c)(4), 213 Rental 223(f), and 234 Rental prior to November 30, 1983, and for 221(d)(4) projects, regardless of when the project was insured, the owners may request an amendment to the Regulatory Agreement subject to Section 3 of this chapter requiring HUD to determine their rents using the alternative rent mechanism described in Section 4.

4. *Definitions.*

A. *HUD Authorized Rent.* These are the unit rents shown in column 3 of the most recently approved Rent Schedule (Form HUD–92458). In the Section 236 program these rents are called basic rents. Depending on income, some 236 tenants will pay market rent or something between basic and market rents which represents 30 percent of adjusted income.

B. *Maximum Allowable Rent Potential.* The maximum annual rent the owner may collect by charging the rents authorized by HUD on the Form 92458.

C. *Utility Allowance.* (APPLIES ONLY FOR PROJECTS RECEIVING SUBSIDY ASSISTANCE WHERE ALL OR SOME UTILITIES ARE PAID DIRECTLY BY THE TENANT). An estimate of utility costs (except telephone) for an average family occupying a unit.

Clarification: Section 221(d)(3) DMIR projects that were built with tenant paid utilities (separate meters) do not need utility allowances. If the project has Rent Supplement or LMSA units, those units however, receive an allowance.

D. *Section 8 Contract Rents.* The rent level called for under the subsidy contract and adjusted annually subject to comparability. Rent used for units subsidized under Section 8 New Construction (880), Substantial Rehabilitation (881) and Section 8 (LMSA) where the owner has had his rent decontrolled or used the alternative rent mechanism.

E. *Services.* This refers to such benefits as may be provided by the project owner to tenants that are not included in the rent and are optional on the tenant's part (i.e. cable T.V., laundry facilities and use of community space in the project.)

Section 2. Tenant Comment Procedures for a Rent Increase

1. *General.* Tenant comment procedures for the rent increase process are provided for in Section 202(b)(1) of the 1978 Housing and Community Development Amendments (HCDA) and Section 329(F) of the 1981 HCDA. Regulations at 24 CFR 245 set the Department's policy on the subject (See Appendix 1). These requirements for tenant comment on rent increases and utility allowance reductions apply to all projects listed in Paragraph 2 except

those rentals under Section 207, 213, 234, Section 231, 220 and Section 221(d)(4). They also do not affect cooperatives whose residents elect a Board of Directors which must approve any proposed increase in carrying charges. This mechanism more than provides a means of comment in the management of the project.

2. *Applicability.* The requirements of this section affect ONLY those owners whose requested rent potential would *exceed* the Maximum Allowable Rent Potential for that project. If the proposed rent potential is less than or equal to the Maximum Allowable Rent Potential, the tenant comment procedures outlined in this section do NOT apply. (See Section 4.)

3. *Owner Responsibilities:* Owners must issue a Notice to Tenants of any proposed rent increase. The Notice must contain all of the information included in the sample notice shown in the Appendix 1. Initial submission of the request to HUD for a rent increase shall go forward at the same time as the Notice is being given to tenants. The HUD Field Office shall receive a copy of the Notice to Tenants along with the documents and information that will be used to justify the rent increase as part of formal rent increase request.

A. For high-rise projects, owners must "post" *or* "deliver" the Notice to each tenant. For all other types of projects, owner need only "deliver" the Notices.

B. *Delivery.* A copy of the Notice must be mailed to each tenant or hand carried directly to each unit. **Important:** The Notice should also be delivered to those tenants who pay market rent and to tenants who would not be affected by an increase because they pay a percentage of income.

C. *Posting.* If applicable, the owner must post the Notice in at least three conspicuous places in each high-rise building in which dwelling units are located AND in one conspicuous place at the address where the material supporting the owner's request will be available for tenant review and copying. **Important:** Owners must keep the posted Notices in place and in legible form for the tenant comment period.

4. *Tenant Review and Comment.* During the 30 days following the date the Notice to Tenants was given, the owner must make all of the materials listed in Section 4, paragraph 2 plus any additional information used to justify the increase available to tenants or their representatives to review and/or copy. For the purposes of computing tenant comment periods, owners must consider the date the Notice was given to be the date by which all notices had been hand-carried or mailed and all required copies had been initially posted. The materials must be available at least during normal business hours and at a place reasonably convenient to the tenants.

5. *Comment Submission.* Tenants may submit written comments on the increase request to the owner or to the HUD Field Office or both. In cases where comments are submitted to the owner, all such comments must be reviewed and evaluated. The comments and evaluations should then be forwarded to the HUD Field Office as part of the formal rent increase request.

6. *Changes to Supporting Documentation.* If during the 30-day comment period the owner makes a material change in any of the documents submitted in support of the increase, the owner must notify the tenants of the change(s) in a notice to be distributed in the *exact* same manner as the original Notice to Tenants. The owner must make the revised materials available for the tenants to review and/or copy for the LONGER of 15 days after the revised notice was given or the days remaining in the initial 30-day comment period.

7. *Submitting the Formal Request for an Increase.* At the conclusion of the tenant comment period as defined in either paragraph 4 or paragraph 6 above the owner must forward in addition to the tenant comments and evaluations, an executed copy of the owner's Certification as to Compliance with 24 CFR Part 245's Review and Comment Procedures. (See Appendix 2)

Section 3—Decontrol of Rents

1. *Decontrol of Section 220/221.* On April 19, 1983 the Department issued regulations (effective 6/1/83) which changed the requirements for HUD control of rents and other charges in Section 207, 220, and 221(d)(4). First, HUD used the discretion it already had under Sections 220 and 221(d)(4) to decontrol rent and other charges in unassisted projects. Regulation would continue only for projects receiving certain types of Section 8 assistance, projects receiving Section 8 LMSA and projects insured under Section 221(d)(3). The regulation of certain charges for facilities and services continued for each of these units and projects, as well as for Section 221(d)(4) elderly and handicapped projects. Second, HUD implemented the Alternative Rent Mechanism (discussed in Section 4 of this chapter) for determining maximum allowable rents for unsubsidized projects insured under Sections 207, 213 (rental), 223(f), 231(c)(4) and 234 (rental).

2. *HURRA of 1983.* In November 1983, Section 431(a)(1) of the Housing and Urban-Rural Recovery Act of 1983 amended section 207(b)(2) of the National housing Act (NHA) to make discretionary the Secretary's authority to regulate rents and other charges for multifamily housing projects insured under Section 207 on or after November 30, 1983. The owner needed only to submit an amended regulatory agreement and HUD would sign it.

3. *Decontrol of Section 207.* Exercising the discretion granted by the change in 431(a)(1), the Department implemented regulations on June 4, 1986 (effective 7/21/86) which deregulated rents and other charges for mortgages insured under Section 207 on or after November 30, 1983. Regulation continued for Section 236 subsidized projects refinanced under Section 223(f). HUD also authorized owners of 221(d)(4) and 220 projects with LMSA to decontrol rents provided they amended the Regulatory agreement and to have its Section 8 rents determined annually by the applicable annual adjustments factor.

4. *Section 207/LMSA.* For those projects insured before November 30, 1983, the 1986 regulations gave Section 207, 220, and 221(d)(4) project owners receiving Section 8 LMSA assistance the option to request the Alternative Rent Mechanism, provided they agree to amend the Regulatory agreement, and have the Section 8 rents determined by the applicable annual adjustment factor.

5. *1987 Housing Act.* The Housing Act of 1987 imposed restrictions on the decontrol of rent and use of the alternative rent mechanism which affected owners who had not requested changes in their regulatory agreements. For those owners whose request for a regulatory change was received before 12/1/87, HUD will process the request and sign the new agreement. However, for owners of projects who were eligible under the 1983/86 regulations BUT who did not request the necessary amendment prior to 12/1/87, the Act requires that the project meet the following tests before the amendment can be approved: (1) The project may not have a project-based Section 8 contract; and (2) no more than 50 percent of its tenants can be defined as lower income.

6. *Projects Not Covered by the Act.* Projects endorsed and insured (or co-insured on or after 11/30/83 under Section 207 and 223 are NOT covered by the 1987 Housing Act. This is notwithstanding any language presently contained in the regulatory agreement.

7. *Projects Covered by the Act.* The Field Office will apply the tests required in the 1987 Act to:

(A) Unsubsidized Section 207, 213(rental), 223(f), 231(c)(4), and 234(rental) projects that could have elected the Alternative Rent Mechanism under the April 1, 1983 rule, but did not do so before 12/1/87.

(B) Unsubsidized 220 ands 221(d)(4) projects insured prior to 6/1/83 who could have elected to deregulate charges for rents, facilities, or services under April 19, 1983 rule, but did not do so before 12/1/87.

(C) Section 207, 213(rental), 223(f), 231(c)(4), and 234(rental), 220 and 221(d)(4) projects insured prior to 11/30/83 and assisted by Section 8 LMSA that were permitted by the June 4, 1986 regulation to request the Alternative Rent Mechanism or decontrol as applicable, but did not do so before 12/1/87.

8. *Special Cases.* HUD continues to regulate a certain limited class of projects which would otherwise be eligible under regulations to request decontrol. This group consists of those projects discussed in this Section where the mortgagor opts to remain controlled in order to maintain the project's tax exempt status and those projects where deregulation would result in the imposition of local and state rent control which is inapplicable as long as HUD is regulating the rent. In both cases the maximum permissible rent charges are determined by the Alternative Rent Mechanism.

9. *PMMs.* Regulation of rents at projects with Purchase Money Mortgages sold with insurance will be in accordance with the rules for Section 221(d)(4).

Section 4. Owner Request for a Rent Increase

1. *Procedures for Requesting a Rent Increase.* Owners are allowed to charge only the rents shown on the rent schedule they submitted and which have most recently been authorized by HUD. When current rent levels are NOT sufficient to cover anticipated or unavoidable increases in operating costs, owners should request that HUD approve an increase in rents. If the increase in proposed potential rent is less than or equal to the Maximum Allowable Rent Potential, owners need only submit a new Rent Schedule 92458. Tenant comment procedures in 24 CFR Part 245 do NOT apply. If the HUD Form proposed rent increase exceeds the Maximum Allowable Rent Potential, owners must take the actions discussed in this Section.

2. *Initial Submission.* In addition to the proposed rent potential, the initial submission to request a rent increase should include the materials listed below, plus any additional documents being used to support the request.

A. A cover letter that briefly does all of the following:

(1) Summarizes the reasons why a rent increase is needed and the date the increase will be effective. Describe the project's physical condition and any improvements that have been budgeted for. The letter may refer to the reasons stated in the Notice or elaborate on those reasons. (The main reasons stated in the letter must be the same as the main reasons stated in the Notice to Tenants, if the project was subject to the tenant comment procedures in Section 2.)

(2) Identifies any proposed change in services, equipment or charges and the reasons for the change.

B. A budget worksheet (Appendix 4(e) format) providing income and expenses for the 12 months following the anticipated effective date of the proposed rent increase. Owners not subject to tenant comment procedures will also submit the Budget Sheet found in Appendix 4(c) which outlines rent structure. (Project owners subject to the tenant comment procedures of CFR Part 245 will have already provided rent structure information when they forwarded HUD a copy of their Notice to Tenants (see Section 2, paragraph 3.)

C. A brief statement explaining the basis for any increase in the expense line items on the budget work sheet. Generally, if an increase amounts to 5 percent or more, it must be documented. If the income or expense was estimated at the prior annual period's actual, or the increase is less than $500, no explanation is required. (Appendix 4(b) provides a sample owner explanation of budget items.)

D. Where applicable, a copy of the Notice to Tenants annotated to show where and how the Notice was distributed (e.g., posted, mailed, hand carried).

E. An executed copy of the Owner's Certification Regarding Purchasing Practices and Reasonableness of Expenses (Appendix 3).

F. A status report on the project's implementation of its current Energy Conservation Plan (See Chapter 12). This may be: (1) A narrative report coded to facilitate references to the plan; or (2) copy of the plan annotated to show the current status of all items that were scheduled to be completed within 60 days after the rent increase is proposed to be effective. THIS APPLIES ONLY TO SECTION 236 AND BMIR PROJECTS, PROJECTS THAT RECEIVE RENT SUPPLEMENT ASSISTANCE, AND PROJECTS THAT CONVERTED FROM RENT SUPPLEMENT TO SECTION 8. This requirement is to assure compliance with Section 329(c) of the Housing and Community Development Amendments of 1981.

G. A signed request for an increase in the Reserve for Replacement if such an increase is contemplated as part of the rent increase request (Appendix 7).

H. *For Projects with Utility Allowances,* a recommendation is to what utility allowance is appropriate for each unit type and a summary of how the owner/agent arrived at that amount with appropriate documentation as prescribed by paragraph 4 of this section.

3. *Use of the Alternate Rent Mechanism.* For projects insured under Section 207, 231(c)(4), 213 Rental, 234 Rental, 223(f) and 221(d)(4), where the necessary amendment to the regulatory agreement has been executed (See Section 3), owners may request that HUD determine a rent increase using the Alternative Rent Mechanism. These steps are to be followed:

A. *Owner Submission for Alternative Rent Determination Mechanism.*

In addition to the information required in Section 4, paragraph 2, the owner who chooses the Alternative Rent Determination process must submit the following:

(1) Appraisal of the value of the property performed by a qualified real estate appraiser of the mortgagor's choice which includes the comparable rents for units in similar projects.

(2) A request for HUD approval of a rent increase.

B. *Processing Procedures for Budgeted Rent Determination.*

(1) Section 207, 231, 213, 220, 221(d)(4) owners or owners of projects which are required to have their rents approved by HUD, who do not choose to use the Alternative Rent Determination procedures will continue to have their rents determined as prescribed in this chapter and no Regulatory Agreement amendment is necessary.

(2) Section 207 owners or owners of projects who require HUD approval of rents or owners of projects who otherwise could chose not to have HUD control rents, that wish to use the Alternative Rent Determination Procedures provided for, shall have their rents determined by HUD based on the submission required in paragraph 3(A) of this section. HUD will approve the lower of the folloiwing two rent potentials: (1) Apply the original debt service factor to the current market appraisal covering the residential value of the property. Then process the rents as outlined in this chapter, to determine

Gross Potential Rent; or the comparable rents submitted as part of the appraisal.

Note: The independent organization or person hired by the owner to conduct and provide the certified appraisal must be a rcognized professional appraiser. The appraiser in making his/her rental analysis must determine the residential rental income separate from the commercial income and provide a delienation in the value of the residential portion separate from the commercial portion of the value. The Field Office in determining the Gross Potential Rents using the new appraisal will use the residential rent portion of the certified appraisal to apply the original debt service factor set at the time of final endorsement in determining the new debt service allowed in the rent computation and insert the new appraised residential value in Box H of the Rent Calculation Worksheet. Offices shall follow outstanding instructions contained in this chapter in processing the expenses used in determining the final Gross Potential Rent.

C. *HUD's Approval of Alternative Rent Increase Method.*

(1) Based on the analysis submitted and assuming the owner is otherwise eligible for a rent increase as covered in this chapter, the Loan Management Branch Chief (LMBC) shall approve in writing the lesser of the rents computed in paragraph 3(B)(2) of this section.

(2) If the LMBC determines that the owner is not entitled to a rent increase as covered in this Handbook, the LMBC shall submit the finding(s) to the Director of Housing Management or Director of Housing for review. The Director will deny or approve the LMBC finding in writing providing the reasons for the final decision if it reverses or alters the LMBC recommendation.

D. *Future Processing After Initial Determination of Rents Using Alternative Mechanism.*

(1) If the rent based on comparables and supported by the appraisal as defined in paragraph 3(B)(2) are less than the processed rent utilizing the appraised value, use the comparable rents submitted by the owner as the approved rent. The Field Office in NOT to become involved in determining comparable rents. This should already have been done as part of the appraisal package.

(2) If the budgeted rents in paragraph 3(B)(2) using the most recent appraisal and budgeted operating costs are less than comparable rents, the bugeted rent level shall be approved. For future requests, continue this process until such time as the comparable rents are less than budgeted rents. When this happens, the comparable rents shall be approved as the Rent Level.

(3) As long as the owner submits a comparable Rent Level which is less or equal to the rent level that would be provided using the last appraised value in determining rents as described in paragraph 3(B)(2) of this Section, a new appraisal is not required. However, when the comparable rents exceed the rents allowed using the last appraised value, then the owner must either submit a new appraisal showing that the rents based on the appraisal are more than the rents based on comparables in order to charge the comparable rents or he/she must charge the rent as determined by using the new appraisal which is less than the comparables.

E. *Thirty Day Processing of Alternative Rent.*

The LMBC must (in writing) approve, disapprove or approve for a different amount requested by the owner, within 30 days of receipt. Failure on ther part of the LMBC to notify the owner in writing of the findings will provide temporary authority to the owner to charge the proposed rents. In the event that the owner implemented the rents at the end of 30 days without HUD's written approval, the additional rents shall be placed in an escrow account or a letter of credit shall be provided so that in the event HUD fails to approve the rent increase, or approves the increase for less than requested, the owner shall immediately return to the tenants that portion of the rent collected which HUD later disapproved. *This applies only to rents processed using the alternative rent mechanism.*

F. *Allowable Project Costs.*

While the cost of the appraisal and/or market analysis can be paid for out of project income, it is not to be used as an allowable project expense in the rent determination defined in Section 5 of this chapter.

4. *Determination of a Utility Allowance.* (see Section 1, para 4C for applicability) For each request for an increase in the HUD-authorized rent potential, the owner must recommend an utility allowance for each unit type. The recommended utility allowance should represent the owner's best estimate of the average monthly utility cost that an energy conscious resident will incur for the year. The utility allowance is not meant to pay all actual utility costs, but rather it is to reimburse a prudent utility consumer for their utility expense. Both the proposed and the current allowance levels should be included in the notices to the tenants.

A. As part of the submission for an increase or decrease in the utility allowance, each owner must submit a summary supporting the proposed change to the utility allowance. That summary should:

(1) Identify the type of utilities covered by the utility allowance (e.g., gas for heating).

(2) State whether any utility rate increases or decreases where implemented during the past 12 months or are expected to be implemented during the next 12 months and the amount of those increases or decreases.

(3) State how any energy conservation initiatives have or will impact consumption.

B. In addition, the owner must request HUD approval of revised utility allowances whenever a utility rate change would cause a cumulative increase of 10 percent or more in the most recently approved utility allowances.

C. Owners must recommend additional utility allowances if the project's design is such that utility costs will vary significantly for units of the same size (e.g., end units vs. interior units).

5. *Field Management of the Rent Request Process.* HUD Field Offices must establish a tracking system that will facilitate and monitor compliance with the following processing times:

A. *When the Proposed Potential does NOT exceed the Maximum Potential.* In these instances, the Field Office need only review the proposed utility allowances and the Rent Schedule. Field staff should complete these actions and return the signed Form 92458 within 10 working days of receiving the owner's request.

B. *When the Rent Increase Exceeds the Maximum Potential.*

(1) *All Projects.* The Field Office should check the completeness of the owners' initial submission within 5 working days of its receipt. Doing so will expedite any required reposting and reduce processing delays.

(2) *Projects NOT subject to 24 CFR Part 245 Tenant Comment requirements.* Complete these reviews and issue a decision letter within 30 days after receipt of all materials required by Section 4, paragraph 2.

(3) *Projects subject to 24 CFR Tenant Comment procedures.* Issue decision letters within 30 days after receipt of the formal rent increase request which includes the tenant comments and other materials required by Section 2, paragraph 7. Final approval cannot take place before the tenant comment period has ended.

C. *Check the completeness of the Owner's Initial Submission.* Within 5 working days of receipt of the owner's initial submission, answer the following questions where applicable.

(1) Does the Notice to Tenants contain all of the information included in the sample notice in Appendix 1? If it doesn't, require the owner to revise the Notice and distribute it as directed.

(2) Has the owner submitted ALL of the materials required by Section 4, paragraph 2? If not, do the following.

(a) Call the owner/agent and ask them to submit the missing materials and follow up in writing.

(b) Be sure the missing materials are made available for any required tenant review. (See Section 2, paragraphs 4, 5 and 6.)

D. You may NOT require that projects routinely submit materials NOT listed in Section 4, paragraph 2. You may require additional submissions ONLY if the actual or projected expense estimates appear to be excessive and the narrative without additional information, cannot support requested expense levels. Special requests should only be made in cases where estimates will have significant monetary impact on the authorized rent potential.

Note.—Your requests for additional information must be made in writing and within 30 days of receipt of initial package. The owner must distribute a second Notice to tenants and comply with Section 2, paragraph 6 where applicable. Be flexible, consider the needs of the project tenants and protection of government interest before requesting additional information.

6. *Seasonal Rents.*

A. *Housing programs of HUD contemplate* relatively permanent occupancy at rents within the ceilings established for year-round occupancy, hence seasonal rents are not generally in accord with the objectives of those programs. In particular, occupancy charges at seasonal rates would be inconsistent with the objectives for which projects are built for cooperative use or for use by families of low and moderate income, or for elderly occupants. In the case of elderly housing projects, there may be isolated instances in which seasonal rates would be in order.

B. *Conversely, in areas where seasonal rents are customary,* there may be rental housing projects which are likely to be in financial difficulty because year-round occupancy cannot be maintained. In such circumstances, HUD will not object to the establishment of seasonal rents for a temporary period provided that:

(1) With respect to all units in the project, preference at all times will be given to permanent tenants at the established year-round rental rate.

(2) None of the units in the project will be rented for a period of less than 30 days.

(3) There will be no increase in existing maximum permissible gross rent by reason of seasonal rates being allowed, and as to the individual units, the aggregate gross rent collected during any fiscal year should not exceed the established maximum rent.

C. *If examination of the project operations* supports the need for seasonal rents, the Housing Management Division (or Insuring Office) Director will grant approval in the form of a letter agreement which shall define the number and type of units so covered, and shall evidence the mortgagor's acceptance of the foregoing conditions under which approval is given. Deviations from the terms under which approval was obtained will operate to breach the agreement.

7. *BMIR Rents Paid by Over-Income Tenants.* HUD–91709, Schedule of Computation of Rental Income in Excess of BMIR Rent Paid by Over-Income Tenants, is a monthly schedule to be completed by BMIR mortgagors in order to compute the amount of rent in excess of BMIR rent paid by over-income tenants and available for credit to the residual receipts account. The completed form shall be used by Housing Management Division personnel and project accountants to arrive at this amount without having to review all of the project's records by lease, Form HUD–91705, etc. This will not, however, eliminate the need to spot-check these records when determined necessary to assure correctness of the schedule. Unless requested by HUD, this form is retained as a part of the mortgagor's record.

8. *Section 236 Projects, Rents Collected in Excess of Basic Rent.* For all types of Section 236 projects, including noninsured projects (see Circular 4530.1, dated 2–7–73), the Regulatory Agreement or the Interest Reduction Contract provide that, subsequent to the commencement of the term of the Interest Reduction Contract, the project owner shall remit each month directly to the Billing and Receivable Division, Office of Finance and Accounting, Department of Housing and Urban Development, Washington, D.C. 20410, together with the appropriate reporting form, the amount by which the total rentals collected on the dwelling units exceed the sum of the approved basic rentals for all occupied units. The prescribed reporting form, Monthly Report of Excess Income, Form HUD–93104, page 1 for insured and Secretary-held projects, and Form HUD–93104A, page 1 for noninsured projects, must be submitted by the tenth of each month, whether or not a remittance is required.

A. *Determining the Amount of Excess Income.* In order to determine the amount of excess income, if any, which must be remitted to HUD, the project owner must prepare page 2 of Form HUD–93104 (or Form 93104A), as of the end of the reporting month, or have the same information shown on this detailed schedule readily available from some other source, such as a computer print-out sheet. This schedule must be attached to the retained copy of page 1, Form HUD–93104 (or HUD–93104A), and made available, upon request, for audit by HUD or the Comptroller General of the United States.

B. *Collecting Excess Rentals Prior to the Commencement of the Interest Reduction Contract.* Any excess rentals collected prior to the commencement of the term of the Interest Reduction Contract shall not be treated as a return of subsidy to HUD but as regular project income.

C. *Adhering to Excess Income Requirements.* The Section 236 law states that the project owner "* * * shall accumulate, safeguard, and periodically pay to the Secretary all rental charges collected in excess of the basic rental charges." HUD's continued payment of interest reduction subsidy to the mortgagee is contingent on the owner's strict adherence to program requirements. Should an owner fail to submit to HUD by the 10th of the reporting month page 1 of Form HUD–93104 or HUD–93104A together with any amount due, the following steps shall be taken:

(1) The Multifamily Mortgage Branch, Office of Finance and Accounting, shall send to the mortgagor a demand letter, and one follow-up letter if no answer is received within 15 days. Copies of these letters shall be sent to the appropriate Housing Management Division Director and the Assistant Regional Administrator for Housing Management (ARA for HM).

(2) Upon receipt of his copy of the first copy of the first demand letter to the mortgagor, the Housing Management Division Director shall immediately take whatever action is deemed appropriate to obtain compliance.

(3) Upon receipt of his copy of the second demand letter to the mortgagor, the Housing Management Division Director shall intensify his efforts to obtain compliance. These efforts shall include, but not necessarily be limited to, immediate notification to the mortgagor by certified mail, return receipt requested, that the interest reduction payment to the mortgagee will be subject to suspension or termination, thus rendering the mortgagor liable for

the full amount of the mortgage payments, unless and until the required page 1 of Form HUD–93104, or HUD–93104A, and any amount due, are received by the Multifamily Mortgage Branch, Office of Finance and Accounting, within 30 days of the date of the letter. Copies of the letter shall be sent to the mortgagee; the Multifamily Mortgage Branch, Office of Finance and Accounting; the Office of Loan Management; and the ARA for HM. The Housing Management Division Director shall continue his efforts to obtain compliance during the 30-day period.

(4) If page 1 of Form HUD–93104, or HUD–93104A, and any amount due are not received by the Office of Finance and Accounting by the date set forth in the Housing Management Division Director's letter to the mortgagor, the Office of Finance and Accounting shall automatically suspend the interest reduction payments beginning with the next payment due to be paid. Notification of this action, and that the mortgagor shall be liable for the full amount of the next mortgage payment falling due, shall be sent by the Office of Finance and Accounting to the mortgagor and mortgagee by certified mail, return receipt requested, with copies to the Housing Management Division Director, the ARA for HM, and the Office of Loan Management.

(5) Any circumstances beyond the mortgagor's control or of an unusual or special nature shall be made known by the Housing Management Division Director to the Director, Office of Loan Management, who may, if circumstances warrant, stop the automatic suspension of the interest reduction payments. The ARA for HM shall be kept informed by copy of related correspondence.

(6) If the mortgagor complies with submission requirements subsequent to the automatic suspension, the interest reduction payments, including back payments, shall be automatically reinstated by the Office of Finance and Accounting.

Section 5. Review of Project Income and Expenses

1. *Focusing the Review.* Determine if the project has any special conditions that will affect income and expense estimates.

A. Access the project's physical condition. To do so, review any:

(1) Recent HUD or mortgagee on-site inspection;

(2) Tenant complaints on maintenance;

(3) Energy Conservation Plan on file for the project;

(4) Recent replacement reserve analysis or withdrawals;

(5) Repair schedules required by TPAs, flexible subsidy contracts, or workout arrangements. (Determine whether project income or other funds will pay for these repairs.)

B. Review available financial information. If applicable, include any recent monthly accounting reports (Form HUD–93479, 80, 81 or reports comparing budgeted and actual expense) and the MIPS Financial Summary Reports; and the servicer's and IPA's review of the most recent audited annual report.

C. Review any recent GAO/IG reviews of this project or the agent's management procedures for this or other projects.

D. Determine if the owner is requesting any change in the services or equipment to be included in the rent. (See the Rent Schedule and cover letter transmitting owner's rent increase request.)

E. Assess the impact of any procedural changes, repair schedules, escrows, or owner contributions required by any TPA, workout or flexible subsidy contract.

F. *Review the Field Office's files on other projects managed by the owner.* Have the owner's past expense projections significantly exceeded actual expenses later reported on the project's financial statements? Have HUD's on-site reviews, the IPA's Report on Internal Controls and Compliance, or GAO's or IG's audits detected serious weakness in cost controls or purchasing procedures (e.g., failure to compare prices or take advantage of discounts)? Is the owner requesting a rent increase to cover expenses and physical improvements for which previous rental increases were authorized? If so, why? If you answered "yes" to any of the above questions, you should determine why those conditions exist and document this for the record.

(1) If the conditions are caused by agent's practices, you must scrutinize the budget. You may need to reduce the projections. If reduced, make appropriate notes for the Administrative Review as to why and how you adjusted these expense items.

(2) If past expenses were excessive and the amount will not be offset by legitimate increases, you will need to allow even less than the prior period's expense. If reduced, again make notes as to why and how you adjusted these expense items.

G. *Analyze the Owner's Income and Expense Projections.* Make an initial assessment during the tenant comment period. If applicable, when tenant comments are later submitted, evaluate whether the tenant comments would change your initial conclusions.

(1) Compare the project's past and present project expenses. Be concerned if the owner's choice of delivery systems causes higher expenses; (i.e., use of an identity-of-interest company or use of contract rather than project staff to do things that might be done by staff. Relatively high costs or rates of increase can be due to special circumstances (vandalism, large number of evictions, emergency repairs). It is project management's responsibility to show that high costs are due to special circumstances rather than to inefficiency or abuse. (Regulatory agreements require that the owner provide for management which is satisfactory to HUD and "* * * give specific answers to questions * * * relative to the income, assets, liabilities, contracts, operations, and condition of the property * * *.")

(2) *Review the owner's expense projections.* Enter the amount you will allow in Column I, of the Rent Increase Worksheet. Be flexible, consider the needs of the project, tenants, the owner's return on investment and maintaining HUD's security interest. Keep in mind that both underestimating and overestimating expenses can have undesirable impacts. If expenses are underestimated, deferred maintenance and defaults can result. If expenses are overestimated, the rents charged will be higher than needed which could result in HUD paying more subsidy than necessary. If the project charges rents which aren't competitive in the market then vacancies result. This could cause a possible default or an insurance claim. Consider utilizing existing residual receipts to offset repairs not covered by the Reserve for Replacement or other costs that are of one time occurrence. Allow reasonable amounts for inflationary increases. But before doing so assess whether the actual expense base is reasonable for the level of maintenance expected during the next year and whether the project is taking reasonable efforts to control costs and is complying with the terms of the Certification in Appendix 3. If the prior period's actual expenses were unjustifiably excessive, adjust the prior period's actual expense before adjusting for inflation. Document this is the record.

(3) *Review the Income Adjustments* using the guidance in the next paragraph. For each line, enter the adjustment you will allow. If your allowance significantly differs from the amount the owner entered, carefully documented the reasons for the difference.

2. *Guidance for Evaluating the Appropriateness of Project Expenses.*

A. *Administrative Expense.*

(1) *Renting Expense.* Amount allowed should be reasonably related to vacancy pattern and marketing area. Weigh impact of increased expenditures on reducing vacancy. If expense increase is due to poor marketing procedures or appears to be a cushion, adjust down to expense of similar projects. If rental expense appears low, some upward adjustments may be made if the project is experiencing high vacancy.

(2) *Salaries.* To evaluate reasonableness consider:

(a) Whether salary is for project employee or employee of agent. Recertification clerk or similar clerical employees may be considered project employees even if work is performed in agent's office. Other project employees will normally be located on site. Where employees working in the agent's office have their salaries attributed in whole or in part to the project, owner must present documentation outlining exactly how the expense was computed.

(b) Number of project employees. Number of employees will depend on size and condition of project and whether maintenance or other services are contracted.

(c) Salary levels. Salaries should be commensurate with the size of the project and duties required and comparable to similar positions at other similar projects in the same area.

(d) Identity-of-interest relationships. Where such relationships exist salary levels should be closely reviewed to ensure they do not exceed rates in arms-length relationships.

(3) *Office Supplies.* Inflationary increases should be allowed if prior year amount was adequate.

(4) *Legal.* If legal expenses are significant, determine reason(s): (1) Large number of evictions; (2) above average fees to attorney (may be caused by lack of shopping around for adequate counsel); or (3) including legal services that should be borne by the owner and not the project. Since the amount of legal fees should normally be within owner/agent's control (i.e., effective managers should screen prospective tenants and shop around for reasonably priced legal services), the amount allowed should not exceed the norm for similar projects in similar locations unless there was a problem unique to that project.

(5) *Auditing.* Keep in mind that audit costs can vary according to the type of project and its requirements, the size of the accounting firm and the quality of the project's records and accounting systems. (See page 7–4 of Handbook 4370.4, *Basic Accounting Desk Guide*, for a further discussion of how audit costs vary.) If this project's audit costs are high determine the cause of the higher costs. To do so, talk with a IPA or review prior management or occupancy review reports and the IPA's comments on the Internal Control and Compliance Questionnaire. If costs are out of line, require future audits to be conducted by auditors who bid on the job. Note: Reasonable fees for preparing any Federal, state or local tax return information required of the project may be charged against the project account and paid from project income without regard to surplus cash computations. For example, if the mortgagor entity is a partnership, the cost of preparing both the Form 1065 and the related Schedules K and K–1 may be paid from project funds. However, projects funds may not be used to pay for tax advice rendered to the mortgagor entity or its principals or for preparation of the personal returns of the project principal.

(6) *Bookkeeping Fees/Accounting Services.* If a computer is used, amounts allowed should be adequate to cover the cost of such services. These charges must be approved by HUD prior to the project paying. If identity-of-interest firms are used, the cost paid by the project should not exceed what it would cost to use a non-identity-of-interest firm.

(7) *Telephone.* Allow amount for local and long distance calls related to project operations. Long distance calls from the project to the office of the management agent are chargeable to the management fee not the project.

(8) *Miscellaneous Administrative.* If the MIPS Financial Flag Report indicates this expense category exceeds 5% of the subgroup require the owner to justify the need.

B. *Operating and Maintenance Expense.*

(1) *Supplies.* Check management review reports to determine if owner/agent is shopping around for lowest possible prices and is taking advantage of quantity discounts and discounts for early payment of bills. Consider need for supplies and owner/agent efficiency. The budget cost of one-time repairs should be listed under project improvements. The quality of the purchase must be considered when looking at the cost. Purchasing a superior product with a longer life span at a higher cost might very well be more cost-effective then purchasing a lower quality item which does not last. Cost is not the only thing you should consider when allowing an expense item.

(2) *Contracts.* Consider the trade off between salary costs and contract costs. A high level of contract repairs may indicate a need for improved maintenance capability, identity-of-interest relation with vendor, a one-time rehabilitation, or a cost-effective business decision.

(3) *Security.* To determine reasonableness of expenses, the Loan Specialists should consider: (1) Need for expense, (i.e., is there a security problem), (2) reason for security problem, (i.e., lighting, location, layout of physical structure, or need for better project management); (3) extent to which security problems are within the control of the agent, (i.e., would stricter enforcement of lease provisions reduce security problem); (4) trade off between security services (agents) and security devices (locks, alarms, lightings, etc.); and (5) is security expense cost effective, i.e., does security expense result in reduced turnover and vacancy.

(4) *Decorating.* Determine whether new items should be budgeted for under the Reserve for Replacement Account. Consider trade offs. Is project using most cost effective decorating items, i.e., would blinds be cheaper than shades in the long run? Are additional decorative items such as drapes needed to improve or maintain occupancy?

(5) *Miscellaneous Maintenance.* If amount is large, identify source and determine need and reasonableness of expense.

C. *Payroll Taxes, Licenses and Insurance.*

(1) *Payroll Taxes.* Payroll taxes will generally be about 12–15 percent of project payroll costs. Included in this category are FICA, State and federal unemployment and workers compensation. In some areas the high costs of workman's compensation can drive payroll taxes up to as high as 20 percent. In cases where this occurs, owners must document these costs. Known increases in rates, as well as increases in salary base, will be justification for budget increases in this expense.

(2) *Other Taxes.* Identify source and assess reasonableness of expected increases and cause for increase. For example, in some states there is an intangible tax on liquid assets. The Field Office should consider assets that will be taxed during the upcoming year instead of accepting last year's estimate expense. Field offices should be cognizant of the outcome of any tax appeals and adjust costs accordingly.

(3) *Isurance.* In assessing reasonableness consider the following: (a) Types of coverage (b) deductibles and (c) claim history. Rates vary among carriers and owners should seek the

lowest rates available for equivalent coverage.

(d) *Utility Expense.* Only utilities paid by the project may be included. To determine reasonable consumption levels, review the justification from owner, energy conservation survey, energy conservation plan, and other related information.

(1) Ensure that the owner has analyzed utility rates and requested the rates most advantageous to the project. (Rates vary accordingly to consumption levels and types of usage—e.g., commercial or residential. Often projects can apply for either residential or commercial rates, whichever will be cheaper.)

(2) If the owner has taken the action required by the preceding paragraph above, allow rate increases which have been, or are expected to be approved and implemented. Document the rates and effective dates used in your projections.

(3) Generally, do *NOT* project for increased consumption. Consumption should increase only because of severe weather. Project for consumption levels to decrease below prior periods if: The prior period had severe extremes of weather that are not expected to occur during the period the rents will be in effect; or recent energy conservation initiatives can reasonably be expected to reduce consumption levels.

(4) THIS PARAGRAPH APPLIES ONLY TO BMIR AND SECTION 236 PROJECTS, PROJECTS THAT RECEIVE RENT SUPPLEMENT, AND PROJECTS THAT CONVERTED FROM RENT SUPPLEMENT TO SECTION 8. Section 329(C) of the 1981 HCDA requires HUD to consider whether the mortgagor could control utility costs by securing more favorable utility rates or undertaking feasible, cost-effective actions to increase energy efficiency or energy consumption. Section 329(C) provides that HUD may reduce budgeted utility expenses if the owner has not taken reasonable action to do so. (See 4350.1, Chapter 12 for more guidance on energy conservation measures.)

E. *Property Tax.* Review requirements of Chapter 5, Section 4, in HUD Handbook 4350.1. Allow only verified increases in rates. If taxes have decreased due to changes in State or local tax laws, use effective rates. Consider also any changes in how the project is evaluated. Even if there is a tax rate decrease, this could be offset by a change in the appraisal process which increased the net value of the project for tax purposes.

F. *Morgage Principal, Interest, MIP.* Include principal, interest and any MIP (or service charge on HUD-held mortgages). Follow the instructions in either part F(2)(a) or F(2)(b) as follows:

(1) If the project will NOT be under a workout during the period covered by the budget, use the amount required by the mortgage. If the mortgage has been permanently modified, use the payment due under the new mortgage terms.

(2) If the project will be under a workout during the period covered by the budget, follow the instructions below.

(a) Budget for any change in monthly payment that will be required during the year covered by the budget.

(b) If the workout will require monthly payments in excess of the amount required by the mortgage, budget for the amount required by the workout agreement.

(c) Otherwise, budget for the amount required by the mortgage.

G. *Other Notes/Loan Payments.* The owner's narrative must identify the loan terms and the purpose of the loans. (For more guidance on what loans may be charged against the project operating account, see Paragraph 2–14a of Handbook 4370.1.

H. *Reserve for Replacement.* Use amount normally requried by HUD, not a lesser amount that may have been approved as the result of a workout agreement. Even if the owner/agent does not request any changes in reserve for replacement deposit, this may be a good time for the Loan Specialist to check the adequacy of the account and level of deposits. **Note:** The Field Office should consider very carefully any increase in the Reserve for Replacement requirements for projects that are eligible or will be eligible over the next ten years to prepay their mortgages and are likely to do so. Since the reserve is an asset of the mortgagor after repayment, this is an especially important issue in projects where the reserve is paid or fed by deep subsidy.

I. *Owner Return.* Projects Owned by Non-profit Mortgagors and projects that have converted from non-profit to limited dividend (LD) ownership, must budget only for the non-profit contingency allowed in the Rent Computation Worksheet.

(1) This policy for LDs is required by the regulations that govern transfers of ownership from non-profit to profit motivated entities (see 24 CFR 265.14(a)). While these projects may NOT budget for a distribution, if surplus cash is available 24 CFR 265.15 permits the new limited dividend owners to collect a distribution of up to 6 percent of the cash contribution THEY MADE AT THE TIME OF THE TRANSFER.

(2) *For other LD projects not covered under 24 CFR 265.* Distribution remains constant from year-to-year. Multiply the owner's initial equity investment by the rate of return HUD allows—e.g., 6 or 10 percent whichever is appropriate.

J. *Project Improvement Needs.* Includes: (1) Non-recurring repair expense; (2) amounts needed to correct financial deficiencies; and (3) project improvements. Examples of eligible items include amounts needed to: (1) Restore units that have deteriorated to the point they no longer can be rented; (2) correct code violations; and (3) pay accounts payable that affect overall viability of the project (e.g., delinquent utility bills). Ineligible items include luxury improvements such as swimming pools and tennis courts. While HUD does not prescribe a specific dollar amount that may or may not be allowed, the Field Office should keep in mind the following when reviewing project improvement needs requests: (1) Amount of lump sum contribution (see Item 2 below); (2) causes of problems and proposals to prevent reoccurrence (for major cost items a MIO plan is recommended); (3) management performance (check prior management review, physical inspection, audit reports); (4) impact of expenditures on rents and subsidy funds and (5) payback or potential benefits from approving the project improvements.

(1) Do *NOT* allow for costs that will be paid from project improvement funds (e.g., Flexible Subsidy or TPA proceeds) or reimbursed from residual receipts or a painting, replacement, or general operating reserve.

(2) Owners should: Identify the total cost and scope of work and provide a written schedule for completing any capital improvements included here. List payee's name, purpose amount and date incurred for each account payable included.

(3) Generally, allow amounts to clear accounts payable only on troubled projects having significant operating deficits. Allow for accounts payable only if the project's purchasing procedures are acceptable, expenses are reasonable and management is satisfactory.

(4) Prorate capital improvements over an appropriate period of time.

K. *Lump Sum Source.* Consider availability of all lump sum sources. If owner is unaware of lump sum sources, the Field Offices should advise the owner. Listed below are some of the most used lump sum sources to fund project improvement needs.

(1) Section 241 HUD Insured Supplemental Loans or conventional financing for capital improvements, etc. (The debt service should be shown on

Section 2, Line 4 of the Rental Computation Form.)

(2) Owner's loan to the project. (The terms of such a loan would have to be approved by the Field Office as repayment of the loan is to be made out of project income as an allowable line item in the rent formula, rather than from surplus cash or residual receipts.)

(3) Advances by the owners. (See HUD Handbook 4370.2, Chapter 2, paragraph 8 for guidance.)

(4) Regular Flexible Subsidy loan for troubled projects.

(5) Change in ownership. (New owner equity investment can be designated for this purpose.)

(6) Release from the residual receipts account, if applicable. Advances from the replacement reserve account, provided a HUD-approved repayment plan is included.

(7) Energy grants from such sources at State, county, city agencies. (Field Offices should attempt to keep abreast of what types of assistance are available in the area.)

(8) Energy loans and grants from the Department of Energy.

L. *Assess Non-Rental Income.*

(1) Estimates Should be Conservative. If non-rental income is significantly overstated, rent potential will not be sufficient to cover project operating costs and owner distributions. Use previous year figures adjusted where solid projections are not available.

(2) Includes income from all sources except: (1) Apartment rents, (2) facilities and services (such as furniture, air-conditioning) provided by the owner to tenants on a voluntary basis and (3) interest earned on funds invested in replacement and residual receipts reserve accounts. To assess reasonableness, compare with income from prior years.

(a) *Laundry and Concession Income.* Include income from laundry facilities (only if they are leased), parking space, and leased commercial space in subsidized projects only (see Section 8). Make appropriate adjustments for existing commercial vacancies.

(b) *Investment Income*

1. Do *NOT* include security deposit interest that must be paid to tenants or retained in the security deposit account and income that is retained in a painting or replacement reserve or in a residual receipts account.

2. If the project has large reserve balances and interest income is not shown on the HUD–92410 or the owner's budget, ask the owner why the reserves are not invested. While only some projects are required to invest replacement reserves or residual receipts, all projects are encouraged to do so. Paragraph 3 of Mortgage Letter 83–24 tells you which projects must invest and how the interest must be distributed (see Appendix ____). **Note:** Interest income should not be used to reduce expenses for the purpose of granting rent increases.

3. *Other Miscellaneous Income.* Do NOT include: "excess rents" collected from Section *236* tenants paying above Basic rent; (exclude these amounts even if the HUD–93104, Excess Income Report, shows the project is not required to submit excess income to HUD;) late charges or damage charges; (if these are collected, they will generate distributions/residual receipts or cover unexpected costs;) generally, these amounts should be relatively small. The owner must identify the purpose of any sizable amounts. (If these amounts were not classified in accordance with IG Handbook 4372.1, require the owner to properly classify all future expenses.)

M. *Vacancy Loss on Apartments.* Use the vacancy rate that was used at the time of final endorsement. This will be 7 percent or 5 percent, whichever is applicable.

N. *Management Fees.* Include only the management fee approved in the appropriate HUD–9839, i.e., the fee that is expressed as a percentage of apartment rents/coop carrying charges collected. This applies also to the fees whose yields have been capped under paragraph 2–34, HUD Handbook 4381.5. If a fee percentage will change during the budget period, use a percentage that represents the weighted average of the fee percentages that will be in effect during the year covered by the budget.

O. *General Operating Reserve (GOR). (THIS APPLIES ONLY TO COOPERATIVES.)* While GOR deposits are always a percentage of the carrying charges, the percent varies between 0 and 3 percent according to the GOR balances. To determine the GOR deposit requirements for the year covered by the budget, use the carrying charge potential now in effect and the instructions in paragraph 2–12b(2)(a) of Handbook 4370.1.

P. *Contingency for Non-profit Owners.* A 2 percent contingency reserve is required for projects owned by non-profits and those projects once owned by non-profit but which have been sold to limited dividend partnerships.

3. *Quality Control.* In order to encourage uniform policy, Branch Chiefs/Supervisors should try as much as is possible to inform their staffs of: any proposed increases in property taxes, payroll taxes, and utility rates; the percentage of any inflationary increases that should be allowed for supplies, etc.; and any property tax abatements for which different types of projects are eligible. When reviewing the administrative process Supervisor/Branch Chief should consider the following.

A. The servicer's comments should be consistent with other information—e.g., project conditions, recent servicing actions taken on this project, tenant comments, the Field Office's experience with this agent?

B. Are the servicer's comments dated and firmly attached to the Rent Computation Worksheet? Do the servicer's comments: explain any significant differences between the owner's and the servicer's income, expense or utility allowance estimates? Do they adequately support the servicer's projections?

C. Are all staff making the same projections as to increases in property taxes, utility rates, and other expenses?

D. Does the servicer's decision letter identify; any physical improvements for which operating funds were budgeted for in the Rent Increase Budget Worksheet; or any special conditions imposed on the owner in conjunction with approval of the rent increase request?

E. Evaluate the rent increase's or utility allowance adjustment's impact on any tenant-based subsidy contract? Are funds available in the current contract? If not, has action been initiated to obtain necessary funding?

Section 6. Computing Rent Potential and Utilities

1. *Maximum Allowable Monthly Rate Potential.* To compute the maximum allowable rent potental, select the appropriate formula from Box E of Rent Computation Worksheet and then complete Box F. In the case of Section 236 Projects, also compute the maximum allowable market rent protential and Market Rent Factor using Box G of the Rent Computation Worksheet. The first time you use the Rent Computation Worksheet for a particular project, use Appendix 4(d) to compute the monthly HUD subsidy. For subsequent rent increases, enter the monthly subsidy you computed on the prior Rent Computation Worksheet.

2. *New Maximum Unit Rents.* (Section 236 Only.) Where a basic and market rent for each unit type must be computed, spread the monthly rent potential across the different unit types. Follow the procedures in Box H of the Rent Computation Worksheet. The Worksheet's procedures give each unit type the same percentage increase in rent. Also, compute new maximum rents, and new maximum *market* rents.

3. *Review the Owner/Agent Estimate of Non-Rental Income.*

A. *Assess the reasonableness of the incomes the owner entered.* Compare them with the actual amounts shown on financial statements the project has previously submitted. Note that any over-estimation of these amounts could result in a rent potential insufficient to support both operating expense and owner distributions. Enter in the column the amounts HUD will allow. If these amounts significantly differ from the owner's estimates, document why you did not accept the owner's estimates.

B. *Document your reasons for approving other than the owner's estimated expense or income.* Since the Rent Increase Worksheet does not provide much space for comments, write any comments on a separate sheet of paper. COMMENTS MUST BE DATED, LABELED WITH THE FHA PROJECT NUMBER AND *FIRMLY* ATTACHED TO THE RENT COMPUTATION WORKSHEET and signed by the Servicer and LMBC.

If HUD's analysis results in a reduction of the rent level requested the owner/manager must be given an opportunity to support their request prior to HUD approving a rent level.

4. *Determine the New Utility Allowance.* Complete the following steps and then the new allowances on the Rent Computation Worksheet.

A. Review the owner's utility analysis and recommended allowances. (See Section 4, paragraph 4(A)) for a description of the information the owner must submit.)

B. Answer the following questions.

(1) Are the owner's comments on recent and proposed rate increases consistent with any information you have obtained from other projects, utility supplies, news reports?

(2) Has the owner appropriately adjusted for recent and planned rate increases?

(3) Has the owner appropriately adjusted consumption estimates to reflect any significant savings likely to result from recent energy conservation efforts?

(4) Does the owner's sampling and analysis of tenants' actual utility costs appear reasonable?

C. If the owner's analysis does not appear to support the request, discuss your concerns with the owner/agent and request additional information, if needed. KEEP IN MIND THAT BOTH UNDERESTIMATING AND OVERESTIMATING CAN HAVE AN ADVERSE IMPACT.

D. You should usually be able to set allowances at the levels recommended by the owner. If you approve utility allowances that deviate from those recommended by the owner, document your reasons for doing so.

Section 7. Notification and Implementation

1. *Notifying the Owner.* Once a decision has been reached on a rent request, the owner should be notified by letter.

A. The letter must:

(1) Explain the reasons for your decision to approve the increase or to deny all or part of the increase. The increase approved can be greater than what the owner requested if justified by your analysis.

(2) Identify any project improvements for which funds were budgeted on the Rent Computation Worksheet—e.g., paintg exterior of four buildings by Spring.

(3) Confirm the amount and effective date of any revised replacement reserve deposit and complete the HUD 9250. (A recorded amendment to the regulatory agreement is not needed.) Transmit copies of the HUD 9250 to the owner, to the mortgagee and to the Management Agent.

(4) Require owners to give tenants 30 days written notice of any increase in the tenant's rent under the terms of the lease.

(5) Remind owners, who are subject to 24 CFR Part 245's tenant comment procedures, to notify tenants of HUD's decision.

(6) Require the owner to complete parts A and F of the Form 92548 Rental Schedule reflecting unit rents not to exceed the maximum rent potential authorized, and transmit the original and one copy to HUD for signature. A signed copy will be returned to the owner.

B. Send the original letter to the owner and a copy to the Management Agent, unless the owner has requested a different distribution.

C. If the mortgage is HUD-held and *delinquent,* send the following to your desk officer in the Office of Multifamily Housing Managemnt.

(1) Your decision letter;

(2) Rent Schedule;

(3) Rent Computation Worksheet.

2. *Review the Owner's Submission of the Rent Schedule (Form HUD-92458) When the Proposed Increase Won't Exceed the HUD Approved Gross Rent Potential.*

A. *Proposed rent potential is LESS than or EQUAL* to the maximum allowable potential computed on the last Rent Computation Worksheet. The owner should have completed all of the Rent Schedule, except Parts F and I.

(1) Check the accuracy of the owner's entries. Be sure: Parts D and E agree with the assumptions you made on the Rent Computation Worksheet regarding non-revenue producing space and commercial space. The effective date is correct.

(2) Enter the Maximum Allowable Potential in Part F. (Obtain this amount from the last Rent Increase Worksheet you completed.)

(3) Sign and date the Rent Schedule in Part I and distribute it as directed in paragraphs 1(B) and 1(C) of this section.

3. *If the Proposed Potential Exceeds the Maximum Monthly Rent Potential* computed in the last Rent Increase Worksheet, complete Columns 3 through 8 of Part A. If the owner will charge the maximum allowable rents, enter the rents computed by the owner in the Rent Increase Worksheet. (**Note:** HUD will prepare the rents by bedroom type in the case of Section 236.) Otherwise, enter the reduced rents you are authorizing the owner to charge. Complete Steps 1, 2 and 3 under the preceding paragraph.

4. *Increase Implementation.* Owners may implement HUD approved changes in rents or utility allowances only after they have: complied with tenant notice requirements; and completed any HUD–50059 or HUD–50059 Worksheet required by Exhibit 3–4 Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs.* (**Note:** These forms are not required for Section 231 or Section 202 tenants who do *NOT* receive tenant-based subsidies.) Owners must implement the new utility allowances for all tenants within 75 days after HUD approves them. Owners may NOT stagger implementation to coincide with tenant's annual recertifications. If a reduction in utility allowances causes the Tenant Rent to increase, the owner must give the tenant at least 30 days advance written notice of the increase.

5. *Notifying Tenants.*

A. *All projects.* If the rent increase or utility allowance reduction will cause an increase in the Tenant Rent, the owner must give the tenants *30 days* advance written notice of the increase. The Notice must specify the new Tenant Rent and the date it will be effective.

B. *Projects subject to 24 CFR Part 245's Tenant Comment Procedures.* The owner must notify tenants of the HUD Field Office decision. The owner's Notice must be written and must:

(1) Be distributed in the manner required by Section 2, paragraph 3.

(2) Tell tenants what rents and utility allowances HUD has approved and any special conditions HUD imposed on the increase (e.g., completion dates for

project improvements or procedural changes required of the management agent).

(3) Tell tenants if HUD's decision will cause an increase in their rent and when that increase will be effective.

6. *Subsidy Contract Amendments.* If a rent increase is approved, owners must check to be sure that subsidy contract authority is sufficient to avoid a shortfall. If a shortfall is likely, the owner should submit a request for an amendment to the contract.

Section 8. Charges for Commercial Facilities

1. *Determining Charges.* Generally, Field Offices should require owners to set commercial rents at least at levels that will cover the commercial space's share of project debt service and operating expenses. (Page 1, Part C of Form 92264 shows how the gross square footage is distributed between residential and commercial space.)

A. Field Offices may authorize project owners to set commercial rents at less than break-even levels if:

1. The owner has taken or is taking all reasonable steps to lease the space at market rents or break-even rates and the reduced rates will not jeopardize the financial condition of the project.

2. The Field Office determines that the proposed use of the space will offer significant benefits to the project and would be more beneficial than other alternatives.

B. Field Offices must NOT approve rents that are less than the market rents for comparable space unless it results in other compensatory financial benefits for the project.

C. Owners must use either the minimum rents required by paragraph 6a or 6b in Part E of the rent schedule. If the owner is recommending a commercial rent that is less than the market rent for comparable space or less than the rent needed to cover the commercial space's share of debt service and operating expenses, the owner must:

1. Certify whether there is an identity-of-interest relationship between the operating of the commercial space and the owner, the agent or any principal of either the owner or agent; and

2. Attach the certification to the Rent Schedule.

D. If owners lease commercial space for periods in excess of 1 years, the leases should provide for any rent increases needed to keep rents at the levels required by this paragraph.

Section 9. Charges for Facilities and Services

1. *Facilities and Services Subject to Charge.* Owners may NOT charge separately tenants for equipment and services that are included in the rent. Part B of the Rent Schedule lists these services and equipment.

A. Owners may offer congregate services *only on terms that have been approved by HUD.*

B. Owners *may* charge tenants for other services or facilities (e.g., parking (see E below), cable TV, use of community space in the project) ONLY if ALL of the conditions listed below are met.

1. The services, facilities and charges have been included in Part C of the most recently approved Rent Schedule.

2. A schedule of those charges has been posted or distributed to the tenants.

3. Use of those facilities or services is optional on the part of the tenant.

4. If not previously authorized the charges must be approved to HUD prior to implementation.

5. Owners can charge for parking *only* in unsubsidized projects where HUD previously approved it. The owner can charge in both subsidized and unsubsidized projects in cold climates where parking spaces are equipped with heating units.

C. All income derived from service and facility charges must be deposited in the project operating account.

Section 10. Preemption of Local Rent Control

1. *Introduction.* For those projects that are subject to State or local Rent Control, CFR 24 Part 246 (Local Rent Control) provides for preemption as follows:

A. *Subsidized projects* are preempted entirely by the regulations in CFR 24, Part 246—Local Rent Control.

B. *Unsubsidized projects* are preempted under the regulations when the Department determines that the delay or decision of the local rent control Board, or other authority regulating rents pursuant to State or local law jeopardizes the Department's economic interest.

All requests for HUD preemption of the local Board's rent controls must be processed in accordance with the procedures discussed in this section.

2. *Projects Automatically Preempted.* This part applies to all projects with mortgages insured or held by HUD that receive a subsidy in the form of:

A. Interest Reduction Payment under Section 236 of National Housing Act.

B. Below Market Interest Rates under Section 221(d)(5) of National Housing Act.

C. Direct Loans at below-market interest rates under Section 202 of the Housing Act of 1959.

D. Rent Supplement Payments under Section 101 of the Housing and Urban Development Act of 1965.

E. Housing Assistance Payments under 24 CFR Part 886.

F. Those units in a project receiving Housing Assistant Payments pursuant to a contract under Section 8 of the United States Housing Act of 1937 or Section 23 of the Act, as in effect before January 1, 1975. Units not assisted are not subject to automatic pre-emption under this part but are covered by paragraph 50 below.

3. *Actions Owner Must Take Before Submitting a Formal Request for Preemtion of Unsubsidized Projects.* If an owner decides to request HUD's preemption, the owner must first have asked the local rent control Board for whatever relief or redetermination is permitted under State or local law. The owner's request must advise the Board of the owner's intent to request HUD-preemption, if necessary. When filing the request for relief, the owner must notify the project residents that it intends to request HUD's preemption if the Board does not respond to the request within 30 days or renders a decision which is unacceptable to the owner.

A. *Notice to Residents.* The owner's Notice must contain all the information in the format shown at Appendix 11. The owner must: (1) Hand deliver or mail a copy of the Notice to each resident; and (2) post the Notice in at least three conspicuous places within each high-rise building in which the affected dwelling units are located. The owner must comply with all representations made in the Notice to Residents, and must give residents 30 days to review materials that will be submitted to justify the preemption request. The owner may post the Notice as soon as it has submitted a request for relief or redetermination to the Board.

B. *Tenant Review and Comment.* Procedures outlined in Section 2 of this chapter are to be followed for tenant comment on preemption applications.

C. *Notice to HUD.* Immediately after distributing and posting the Notice to Residents, the owner must advise HUD that it intends to request HUD's preemption of the Board's actions. To do so, the owner must provide HUD with copies of all of the materials listed below.

(1) A copy of the Notice to Residents, annotatied to show the date(s) the Notice was posted and distributed.

(2) An audited Statement of Profit and Loss (Form HUD–92410) prepared in accordance with HUD Handbook 4370.2 and covering the project's most recently ended fiscal year. If more than 4 months have elapsed since the end of the project's fiscal year, the owner must also submit, and certify to the accuracy of, an unaudited Form HUD–92410 for the period elapsed since the end of the project's last fiscal year.

(3) A copy of the relief application the owner submitted to the Board with supporting documentation.

(4) A certified statement which provides for Itemization of resident turnover rates and percentages of rent potential lost to vacancies and to nonpayment of rent on occupied units during the period covered by the Forms HUD–92410 and by the fiscal year preceeding those periods. Each type of loss and each fiscal period must be reported separately. The following format is suggested:

	Since end of last FY	FY ending -/-/-	FY ending -/-/-
Number of units vacated	____	____	____
Percentage of rent potential lost to:			
(a) Vacancies	____%	____%	____%
(b) Collection loss	____%	____%	____%

(5) A certified statement covering known or approved rate or cost increases or decreases during the 12 months preceding the date of the owner's Notice to Residents. If such changes did occur, the owner must give the date the changes were or will become effective and the old and new rates and provide documentation for following.

(a) Property tax assessment or valuation rates;

(b) Utility rates;

(c) Employee salaries or benefits;

(d) Insurance;

(e) Contract for services.

4. *Processing an Exemption.* The owner/agent shall file a request for approval of an increase in rental charges with HUD and in accordance with procedures detailed in Section 4 of this chapter. The local HUD Office will process the request in accordance with procedures detailed in this chapter. Upon receipt of authorized rents, the owners will comply with the posting requirements detailed in this chapter.

5. *Initial HUD Review for Completeness.* Immediately upon receipt of the owner's submission, HUD must check the package for completeness. If the submission does not contain all of the information required by paragraph 3(C) of this section, HUD must request the missing information from the owner within 48 hours of review. When the submission is complete it will be held on abeyance until the owner submits a formal preemption request. If the materials omitted from the initial submission or any changes to material previously submitted were not previously made available to the project residents, the owner must give residents an additional 30 days to review these materials.

6. *Owner's Formal Preemption Request.* After the resident comment period has expired and the owner had evaluated any resident comments received, the owner may submit a formal request for HUD preemption. The request to HUD should include all of the materials listed below.

A. Copies of all of the written comments the residents submitted to the owner;

B. The owner's evaluation of the resident's comments;

C. The Board's decision and a statement as to the insufficiency of the funds or a statement from the owner certifying that a decision from the Board has not been received;

D. The owner's certification that:

(1) The Notice to Residents required by paragraph 3(A) of this section was given as required.

(2) The owner has taken reasonable steps to assure that: (a) the substance of the Notice has been conveyed to each resident household; and (b) the posted notices were maintained intact and in legible form for the full resident comment period;

(3) Copies of the materials submitted in support of the preemption request were located in a place reasonably convenient to residents during normal business hours and at least one evening a week during business hours;

(4) Requests by residents to inspect such materials, as provided for in the Notice, were honored; and

(5) Copies of all comments received from the residents were considered and are being transmitted to HUD.

E. A cover letter which is signed by the owner and includes a statement that "under the penalties and provisions of Title 18 U.S.C. Section 1001, the statements contained in this application and its attachments have been exmained by me and, to the best of my knowledge and belief, are true, correct and complete."

7. *Evaluating the Formal Request.* HUD must determine if the owner's package includes all of the information required by the previous paragraph and must request any missing materials from the owner. HUD must carefully review any residents comments, the owner's analysis of those comments and any Board decision already received. After reviewing those materials, HUD must within 10 days determine what rent levels are necessary to operate the project.

A. If the rent levels computed by the Field Office are greater than those permitted by the local Board or if the local Board has not yet rendered a decision on the owner's request for relief, the Field Office must discuss the project's needs with the Rent Control Board. If the Field Office and Board are able to reach agreement on a rent level, the Field Office should confirm the agreement in writing and provide the Board and the owner a copy of the agreement. If the Board and the Field Office cannot reach agreement on a rent level, the Field Office must forward the case to the Office of Multifamily Housing Management in Headquarters. The Field Office must clearly explain both its own and the Board's positions and recommend what aciton Headquarters should take. The Office of Multifamily Housing Management will review the case and issue a decision establishing the maximum rent level the owner may charge. HUD Headquarters will send copies of its decision to all parties—the HUD Field Office, the owner and the Board.

B. If the rent potential computed by the Field Office is less than the potential authorized by the Board, the Field Office should deny the owner's request for preemption. The Field Office must give the owner a letter specifying the maximum monthly rent potential the Field Office will approve. The Field Office must send a copy of the letter to the Board and to the Office of Multifamily Housing Management in Headquarters.

Note.—If the owner receives the Board's decision after filing its preemption request with HUD, the owner must immediately notify HUD that a decision has been received and must forward a copy of the Board's decision.

8. *Owner Implementation of HUD's Decision on Preemption.* The owner must notify residents of HUD's final decision on the preemption request. The owner's notice must be: (a) Hand delivered or mailed to each resident; and (b) posted in at least three conspicuous places within each structure in which the affected units are located. The owner's notice must convey HUD's reasons for approval or disapproval of the preemption request.

The owner may implement the HUD approved rent levels only after giving the project residents at least 30 days written notice of the increase and complying with any other applicable terms of the tenants' leases.

9. *Preemption of Rent Control Board's Lease Requirements.* Some rent control Boards specify minimum lease terms which are in excess of one year. If HUD decides to preempt the Board's rent controls and it will take the project more than 60 days to reach the rent levels authorized by HUD, HUD will preempt the local Board's requirements on minimum lease terms. Until the project is charging the HUD approved rent potential, the owner may not offer residents leases with terms in excess of one year.

Chapter 7 Appendix 1

In Handbook 4350.1, Chapter 7 Appendix 1, see 24 CFR Part 245, Subparts D and E.

Chapter 7 Appendix 2

OWNER'S CERTIFICATION AS TO COMPLIANCE WITH TENANT COMMENT PROCEDURES IN 24 CFR 245 (FORMERLY IN 24 CFR 401)

Project Name _____

FHA or Non-Insured Project No. ____

Acting on behalf of _____, the Project Owner, I certify that project management has taken ALL of the actions listed below.

(1) Distributed a Notice to Tenants, in the forms and manner required by 24 CFR 245.310 and 245.410. (24 CFR 245.410 applies only if a reduction in utility allowances is proposed.)

(2) Took reasonable steps to assure that any posted Notices remained intact and in legible form for the full comment period required by 24 CFR 245.

(3) Made all materials submitted to justify the increase available during normal business hours in a place reasonably convenient to project residents.

(4) Honored any resident's request to inspect those materials.

(5) Reviewed and evaluated all comments received from project residents or their authorized representatives.

(6) Examined all materials submitted to HUD/the State Agency in support of the rent increase request.

I also certify, that all information submitted with my rent increase request is true, correct and complete.

Signed by:

_____

Name

_____

Title

_____

Signature

_____

Date

Chapter 7 Appendix 3

CERTIFICATION AS TO PURCHASING PRACTICES AND REASONABLENESS OF EXPENSES

Project Name _____

FHA or Non-Insured Project No. ____

Acting on behalf of _____, the Project Owner, I certify that ALL of the following statements are true.

(1) The project is obtaining utilities at the lowest rates available.

(2) The project has received or requested any tax relief for which it is eligible and management has analyzed the project's property tax bills and appealed any assessments which appeared unreasonable.

(3) Amounts paid to individuals or companies having an identity-of-interest with the owner or the management agent were not in excess of the costs that would have been incurred in making arms-length purchases on the open market.

(4) Management has exerted reasonable effort to take advantage of discounts and has credited the project with all discounts, rebates or commissions received with respect to purchases, service contracts and other transactions made on behalf of the project.

(5) Management has obtained contracts, materials, supplies and services, including the preparation of the annual audit, on terms most advantageous to the project and at costs not in excess of amounts ordinarily paid for comparable contracts, materials, supplies and services in the area in which such services, supplies, or materials are furnished.

(6) Management has solicited verbal or written cost estimates, as necessary to comply with the Paragraphs 3 through 5 above. Management has documented the reasons for accepting other than the lowest bid and will make the documentation available to HUD, upon request.

Warning:

• 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than 5 years, or both.

• 12 U.S.C. 1715z–4 provides in part: "Whoever, as an owner of a property which is security for a mortgage (covering multifamily housing, as defined in the regulations of the Secretary) or as a stockholder * * * beneficial owner * * * trust * * * or as an officer, director or agent of any such owner (1) willfully uses or authorizes use of any part of the rents or other funds derived from the property covered by such mortgage in violation of a regulation * * * (2) willfully and knowingly uses or authorizes the use, while such mortgage is in default, of any part of the rents or expense * * *shall be fined not more than $5,000 or imprisoned not more than 3 years or both.

Signed by:

_____

Name

_____

Title

_____

Signature

_____

Date

Chapter 7—Appendix 4(a)

Rent Increase Budget Sheet Instructions For Completion

A. Instructions for Owner/Agent.

1. Enter the following:

a. Project Name;

b. FHA #;

c. Management Agent—if managed by Property Management Agent;

d. Percentage fee or PUPM Cap. Agent certification contains authorized percent fee or PUPM Cap.

2. If Applicable, complete the Rent Structure—current and proposed and compute monthly potential.

3. Income and Expense Projections.

a. Enter Actual Expenses for prior FY in column 1.

b. Enter Expense from current FY to date and number of months covered. (Do not annualize) in column 2.

c. Enter Budget Projections in column 3.

d. Cash Requirements provides for entry of the following payments.

(1) Mortgage (principal)

(2) Reserve for Replacement

(3) Painting Reserve

(4) Distribution

(5) Other—Cash expenditures no expensed.

(a) Capital expenditures

(b) Other Reserves

Note.—Account codes should parallel those on the HUD–92410.

Chapter 7—Appendix 4(b)

SAMPLE

Owner Explanation of Income and Expense Estimates

6210—*Advertising and Renting Expense.* This includes: (1) $200 for periodic ads in local newspaper; and (2) the cost of credit reports on new applicants.

6351—*Bookkeeping Payroll and Services.* Includes this project's share of centralized accounting operation. Costs are prorated over all of the 20 projects managed by our agent, Professional Management, Inc. Costs are prorated according to each project's relative volume of transactions.

6310—*Clerical and Occupancy Salaries.* Includes one-fourth of one occupancy clerk's time. Occupancy clerk also works for XYZ Apartments and Evergreen Apartments.

6311—*Office Supplies.* Projects a 4 percent inflationary increase over the prior year's actual expense.

6330—*Manager's Salary.* Includes manager's salary plus contract rent on a 2-bedroom apartment. As payroll schedule shows, manager will receive a $100 per month increase for cost-of-living and performance bonuses.

6340—*Legal.* This represents retainer for an attorney who handles all routine project matters. This is less than last year's actual expense. Last year, a larger than usual number of evictions were required because of the former agent's failure to effectively screen applicants. That agent was removed 6 months ago.

6350—*Auditing.* Represents the contract price for the annual audit required by Handbook 4372.1. After obtaining proposals from two other firms, we executed a contract with Jones and Smith, Inc. Their bid was $1,200 less than the other bids and we understand that HUD FIeld Offices have found their work acceptable.

6360—*Telephone and Anwsering Services.* Includes local telephone service and answering service for evenings and Sundays. Allows for $15 per month increase in answering service, effective November 1, and $5 increase in base telephone service rate.

6390—*Miscellaneous Administrative.* Last year's actual.

6450—*Electricity.* Reflects 4 percent rate increase and 5 percent decrease in consumption because are described in our cover letter. *Note:* Utility company has requested a 6 percent increase. Since the Commissioner usually approves only about ⅔ of the requested rate, we are budgeting for only a 4 percent increase. We are assuming that the increase will become effective February 1, 1986, the date requested by the utility company.

6451—*Water.* This is a 10 percent decrease over last fiscal year's actual costs. While no rate changes are expected, consumption should decline somewhat. Last year's consumption was increased by: (1) Drought conditions; and (2) watering of newly seeded lawns.

6452—*Gas.* Reflects 5 percent rate increase that has been approved by the utility commission and will become effective December 1985.

6453—*Sewer.* Represents a 10 percent decrease from last year's actual. Sewer expense is one-third of the water expense is expected to decrease for reasons discussed above.

6545—*Elevator.* Cost of service contract with Elevators, Inc. This amount was the lowest of the three bids we obtained last Spring.

6510—*Janitorial and Cleaning.* Last year's actual, plus 4 percent inflationary increase.

6570—*Motor Vehicle.* Last year's actual.

6519—*Exterminating.* Project's contract with Bug-Off provides for one visit per month at cost of $100 each. This amount was $10 higher per visit than other proposals but we accepted this proposal because contractor's performance over past 3 years has been excellent.

6525—*Trash Removal.* Contract rate increased by $30 to $380/month, effective last May. This increase is partly reflected in the partial year's HUD–92410 and fully reflected in the budget. Trash is removed twice a week.

6530—*Security.* Cost of new deadbolt locks for 15 units on Evans Street. There have been several break-ins at single family homes near that side of the project. We also have asked the police department to increase patrols in that area.

6537—*Grounds.* Contract with Evergreen Grounds covers supplies and labor at $6,000/year. Contract expires in December 1986.

6560—*Decorating and Interior Painting.* Represents cost of repainting 12 units. Apartments of long-term residents are repainted every 4 years. Replacement reserves will pay for any needed drapery or carpet replacement.

6541—*Repairs Materials.* Represents last year's repairs plus a 4 percent inflationary increase. None of the prior period's repair expenses were reimbursed out of replacement reserves; all were routine repairs.

6540—*Repairs Payroll.* Includes: (a) Salary expense for two maintenance men at rates shown in the attached payroll schedule; and (b) a 50 percent discount on one maintenance men's rent.

6710—*Property Taxes.* The county has increased the assessed value by 5 percent; tax rate is unchanged. Two years ago, we successfully appealed the county's calculation of the project's assessed value. At that time, the calculation has used incorrect assumptions on income and expense levels. Since the new, increased assessed value used the revised assumptions agreed to in the appeal, we are accepting the assessed value as accurate.

6711—*Payroll Taxes.* Budgeted at 11 percent (6.7 percent FICA, 4.3 percent combined State and Federal unemployment) of salaries listed in the attached payroll schedule. Increased cost is due to cost-of-living increases in employee's base pay.

6719—*Miscellaneous Taxes and License.* Includes local licensing fees for project elevators.

6720—*Property and Liability Insurance.* Cost of an all-risk policy with Safeguard, Inc.

6722—*Workmen Compensation.* Policy covers all of agent's employees. This is project's prorated share of the total cost of the policy; the proration covers the employees listed on the attached payroll schedule.

Replacement Reserve. Includes $15 PUM increase in monthly deposits to be implemented with this rent increase. Deposits have not been increased since project commenced occupancy in 1978. Attached is an Agreement formalizing this increase in deposits.

Project Improvements. Includes one-fourth of the cost of painting the project exterior. (Future exterior painting costs will be paid from the replacement reserve. Costs of exterior painting were considered in establishing the new deposit.)

Service Income. Average of actual income for last 2 years. Laundry machines are leased from Wash and Dry, Incorporated. Income has consistently stayed at this level.

Investment Income. $6,000 to the $48,000 replacement reserve (balance as of *May 31, 1985*) will be withdrawn for roof repairs. The remaining $42,000 will be invested as follows:

$34,000 in Treasury Notes at 9.24 percent.
$8,000 in insured money market account at 8.5 percent.

Note.—All replacement reserve interest is deposited in the project operating account. State law requires that interest earned on tenant security deposits be passed through to tenants.

Vacancy Loss. Decreased from prior year because we expect new agent to reduce tenant turnover and more aggressively market units.

Management Fees. Will request a one-half percent increase in fees, effective March 1, 1983, if new agent performs as expected. Agent has already made significant progress in turning the project around.

Note.—Line items should reference the specific HUD–92410 Account Code. Where the increase is less that 5 percent, no justification is required. Capital expenditures should not be included in 92410 line item Budget but in other Cash expense.

If the rent increase is based on capital expenditures (non-reoccuring) a reserve analysis should be included.

BILLING CODE 4210-01-M

4350.1

APPENDIX 4(c)

RENT SPREAD SHEET

PROJECT NAME _____ FHA # _____

MANAGEMENT AGENT _____ % FEE _____

Fee Capped (Y/N) ____

PUPM _____

RENT STRUCTURE

Unit Type	Current Unit Rents	Utility Allowance	Number Units	Proposed Unit Rents	Proposed Util. All.
Current Monthly Potential			Requested Monthly Potential		

4350.1

CHAPTER 7 APPENDIX 4(d)

	Original Interest Rate on Mortgage							
	6.75%	7.00%	7.25%	7.50%	7.75%	8.00%	8.25%	8.50%
40	4.7021	4.9192	5.1383	5.3594	5.5821	5.8067	6.0328	6.2604
35	4.5639	4.7735	4.9851	5.1987	5.4141	5.6314	5.8054	6.0711
30	4.4152	4.6160	4.8189	5.0237	5.2303	5.4389	5.6492	5.8613
25	4.2560	4.4469	4.6397	4.8343	5.0307	5.2290	5.4290	5.6307
20	4.0864	4.2662	4.4476	4.6307	4.8155	5.0019	5.1898	5.3794

4350.1

CHAPTER 7 Appendix 4(e)

BUDGET WORKSHEET

Income and Expense Projections

Project No. Name of Project

Description of Account	Acct. No.	HUD-92410 Audited - Last FY	Current FY FY #MOs.	Budget - From / / To / /
Rental Income 5100				
Apartments or Member Carrying Charges (Coops)	5120			
Tenant Assistance Payments	5121			
Furniture and Equipment	5130			
Stores and Commercial	5140			
Garage and Parking Spaces	5170			
Flexible Subsidy Income	5180			
Miscellaneous (specify)	5190			
Total Rent Revenue Potential at 100% Occupancy				
Vacancies - 5200				
Apartments	5220			
Furniture and Equipment	5230			
Stores and Commercial	5240			
Garage and Parking Spaces	5270			
Miscellaneous (specify)	5290			
Total Vacancies				
Net Rental Rent Revenue Less Vacancies				
Elderly and Congregate Services Income - 5300†	5300			
Total Services Income † (Schedule Attached)-	5300			
Financial Revenue- 5400				
Interest Income-Project Operations	5410			

4350.1

CHAPTER 7 Appendix 4(e)

Income from Investments -Residual Receipts	5430			
Income from Investments Reserve for Replacement	5440			
Income from Investments Miscellaneous	5490			
Total Financial Revenue				
Other Revenue - 5900				
Laundry and Vending	5910			
NSF and Late Charges	5920			
Damages and Cleaning Fees	5930			
Forfeited Tenant Security Deposits	5940			
Other Revenue (specify)	5990			
Total Other Revenue				
Total Revenue				
Administrative Expenses 6200/6300				
Advertising	6210			
Other Renting Expense	6250			
Office Salaries	6310			
Office Supplies	6311			
Office or Model Apartment Rent	6312			
Management Fee	6320			
Manager or Superintendent Salaries	6330			
Manager or Superintendent Rent Free Unit	6331			
Legal Expenses(project)	6340			
Auditing Expenses (Project)	6350			
Bookkeeping Fees/Accounting Services	6351			
Telephone and Answering Service	6360			

Bad Debts	6370			
Miscellaneous Administrative Expense specify	6390			
Total Administrative Expenses				
Utilities				
Fuel Oil Coal - 6400	6420			
Electricity	6450			
Water	6451			
Gas	6452			
Sewer	6453			
Total Utilities Expense				
Operating and Maintenance Exp - 6500				
Janitor and Cleaning Payroll	6510			
Janitor and Cleaning Supplies	6515			
Janitor Cleaning Contracts	6517			
Exterminating Payroll Contract	6519			
Exterminating Supplies	6520			
Garbage and Trash Removal	6525			
Security Payroll/ Contract	6530			
Flexible Grounds Payrol	6535			
Grounds Supplies	6536			
Grounds Contract	6537			
Total Repairs Payroll	6540			
Repairs Material	6541			
Repairs Contract	6542			
Elevator Maintenance/ Contract	6545			

Heating/Cooling Repairs and Maintenance	6546			
Swimming Pool Maintenance/ Contract	6547			
Snow Removal	6548			
Decorating Payroll/ Contract	6560			
Decorating Supplies	6561			
Vehicle & Maint. Equip Operations and Repairs	6570			
Miscellaneous Operating Maintenance Expenses	6590			
Taxes and Insurance - 6700				
Real Estates Taxes Interest	6710			
Payroll Taxes (FICA)	6711			
Miscellaneous Taxes, License and Permits	6719			
Property and Liability Insurance (hazzard)	6720			
Fidelity Blood Insurance	6721			
Workmen's Compensation	6722			
Health Insurance & Other Employee Benefits	6723			
Other Insurance specify	6729			
Total Taxes and Insurance				
Financial Expenses 6800				
Interest on Bonds Payable	6810			
Interest on Mortgagee Payable	6820			
Interest on Notes Payable (Long-Term) *	6830			
Interest on Notes Payable (Short-Term) *	6840			
Mortgage Insurance Premium/Service Charge	6850			

* HUD approved Secondary Financing only for Budget Projections

4350.1

TYPING GUIDE SHEET

CHAPTER 7 Appendix 4(e)

Miscellaneous Financial Expenses	6890				
Total Financial Expense					
Elderly and Congregate Service Expenses-6900	6900				
Total Service Expenses Schedule Attached					
Reserve for Replacement Dep. Req.					
Painting Reserve					
Principal Payments Req.					
Debt Service Reserve (202)					
General Operating Reserve	(GOR)				
Excess (Deficiency) Income over expenses					
Total Cost of Operation					

(Six More Typing Lines Left on This Page)

5

Replaces HUD-21C (6-67) which may be used

HUD-21-C (9-82)

BILLING CODE 4210-01-C

89

Rent Computation Worksheet Instructions for Completion

A. *Enter the following:*

1. Project Name.
2. FHA Number.
3. Management Agent.
4. Management Fee—Enter percent or PUPM Fee if capped—Information can be obtained from Management Certification.
5. Initial Mortgage—For 236's 221(d)(3) and 202's.
6. Replacement Cost for 221(d)(4)'s, 207 and 231's.
7. Modified Mortgage—If modified indicates YES and enter Debt Service (P & I and MIP).
8. Under workout—If project under workout enter YES and workout Payment and ending date.
9. Initial Equity—Enter for 236's and 221(d)(3) only.
10. Debt Service Rate—Enter for 221(d)(3)'s, 207's, 221(d)(4)'s, 231's and 202's.

B. *Compute the following*

1. Box A—Substitute requested valves and compute Debt Service that will be allowed.

(a) Use formula that pertains to specific section of Act.

(b) Deregulated projects under alternative mechanism *insure you enter appraised Replacement Cost.*

(c) 207's, 221(d)(4) and 231's not deregulated add 2 percent mortgage to Replacement Cost.

2. Box B—Compute allowed return or income Reserve for 236's and 221(d)(3).

(a) Non-profit projects transfered to limited dividend *use Income Reserve* computation not distribution computation.

3. *Total Cash needs less Management*—Box C.

(a) Enter allowed amounts from Rent Increase Budget Worksheet less Management.

(b) Enter Funding to Reserve that will be authorized.

(c) Enter computed Debt Services.

(d) Enter computed return or Income Reserve.

4. *Management/Vacancy Factor,* Box D—If Fee is not capped factor equals (1-Mortgage Fee) × (1-Vacancy). If Fee is capped factor equals (1-Vacancy).

5. *Compute Authorized Monthly Rent Potential,* Box E and F.

(a) Rent Potential (includes other Income) equals total cash (Box E) divided by Mortgage/Vacancy Factor (Box D).

(b) Authorized Potential equals Rent Potential less other Income.

(1) Other Income equals commercial income and garage/parking and laundry.

(2) Monthly potential equals Authorized Potential divided by 12.

(3) Percentage Increase equals (Authorized Potential less Current Potential) divided by Current Potential.

6. *Market Rent Potential,* Box G—(236's only).

(a) Compute annual HUD subsidy (See Attachment ____).

(b) New Market Potential equals new Authorized Potential plus HUD subsidy.

(c) Market Rent Ratio equals new Market Potential divided by new Authorized Potential.

7. *United Rent Computations,* Box H.

(a) Authorized Rent levels—for each unit type multiply current unit rent by percent increase.

(b) Market Rate (236 projects only) multiply Authorized Rent times Market Rent Ratio.

Rent Computation Worksheet

Project Name _____ FHA #_____ Date _____

Management Agent _____ Fee _____ (Capped Y/N) _____

Mortgage _____ Replacement Cost _____

(236, 221(d)(3) and 202) (207, 221(d)(4), 231)

Modified Mortgage (Y/N) _____ Under Workout (Y/N) _____

(If yes) Debt service _____ If yes w/o Payment _____ (P & I & MIP)

Ending Date _____

Initial Equity _____ Debt Service Rate _____

(If NP, Total Initial Equity=0) (Line 5d 2264A)

(236 & 221(d)(3) Only)

Box A Debt Service Computation

236=Mortgage × .03034273.....
221(d)=Mortgage × Debt Service Rate.....
207/231=Replacement Cost × Debt Service Rate.....
(Replacement Cost is new appraised cost).....
207/221/231=(Replacement Cost=Working Capital) × Debt Service Rate.....
(Projects not deregulated).....
Working Capital=2 percent mortgage.

Box B Distribution Computation

236/221(d)(3)=Initial Equity × .06.....
207/231/221(d)(4)=Allowance calculated in conjunction with Debt Service.....
Income Reserve (Non-Profits)
236 NP=Mortgage Payment × .06393.....
221(d)(3) NP=Mortgage Payment × .05263.....

Box C Rent Potential Computation

Allowed Expenses less Management
Plus
Reserves
Debt Service
Return/Income Reserve
Total Cash less Management

Box D Management Vacancy Factor

Authorized Management Fee _____ (1)
Allowed Vacancy Percent _____
Factor=(1 —Management Fee)x(1—Vacancy)
(1) PUPM Cap (Y/N) _____
If yes Fee=0
Allowed PUPM _____

Box E

RENT POTENTIAL=Total Cash/Factor (No PUPM Cap)
RENT POTENTIAL (PUPM Cap)=Total Cash/Factor+(PUPM Management Fee x 12 x Number of Units)

Box F

1. RENT POTENTIAL
2. Less Other Income
3. Authorized Potential
4. Monthly Potential (Authorized Potential/12)
Percent Increase (Authorized Potential—Current Potential divided by
5. Current Potential

Box G Market Rent Potential (236's only)

Annual HUD Subsidy (Interest Reduction Payment)
Authorized Annual Rent Potential (BOX F)
New Annual Market Rent Potential
Market Rent Ratio (New Annual Market Rent Potential Divided by Authorized Annual Rent Potential [BOX F]

Box H Unit Rent Computations

Unit type
Current Unit Rent
1 + % Increase
Authorized Unit Rent

Market Rent (236 Only)

Authorized Unit Rent
Market Ratio
New Market Rent

Utility Allowances

Current Utility Allowances
Approved Utility Allowance

Request To Increase Monthly Replacement Reserve Deposits

Project Name _____ Mortgagee _____
FHA or Non-Insured Project Number _____

I hereby request an increase in the monthly deposits to the Replacement Reserve/Painting from the current amount as of

_____. Attached is the Reserve Analysis in support of this request.

Signed by:

Owner

_____

Name

_____

Title

_____

Signature

_____

Date

Chapter 7 Appendix 7

AMENDMENT TO REGULATORY AGREEMENT FOR SECTION 220 AND 221(d)(4) PROJECTS (FORMS 92466)

4. (a) The owner shall not rent the units for a period of less than thirty (30) days. Commercial facilities shall be rented for such use and upon such terms as determined by the owner. Subleasing of dwelling accommodations, except for subleases of single dwelling accommodations by the tenant thereof, shall be prohibited without prior written approval of the owner and the Secretary and any lease shall so provide. Upon discovery of any unapproved sublease, owner shall immediately demand cancellation and notify the Secretary thereof.

*(For projects constructed for family use and do not have a Section 8 Contract.)

(b) Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the owner for any rental accommodations, facilities and/or services which may be furnished by the Owner or others to such tenant upon his request.

*(For projects constructed exclusively for handicapped tenants or who receive assistance under Section 8.)

(b) Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and owner for accommodations. Tenants receiving Section 8 assistance shall have their rents determined by the HAP Contract. No charge shall be made, however, for facilities for services without the approval of the Secretary.

(c) In the event the project is under jurisdiction of a local rent control law or ordinance and the owner desires the Secretary to preempt those controls, the owner shall comply with applicable regulations or instructions in effect at the time of application or preemption, currently 24 CFR Part 246, Subpart B.

*Delete the paragraph which does not pertain to the project at hand. Do not delete paragraphs (a) and (b). Your choice is limited to (b).

Chapter 7 Appendix 8

REGULATORY AGREEMENT AMENDMENT FOR MORTGAGES LIMITED DISTRIBUTION PROJECT

1. Subparagraph _____ [6(e)(1) in Form 92466, or its counterpart] of the Regulatory Agreement dated _____ in connection with FHA Project No. _____ is hereby amended to read as follows:

(e) Make, or receive and retain, any distribution of assets or any income of any kind of the project except surplus cash and except on the following conditions:

(1) All distributions shall be made only as of and after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction; all distributions in any one fiscal year shall be limited to [1] ____ per centum on the initial equity investment, as determined by the Secretary which shall be cumulative;

2. The Regulatory Agreement is further amended by adding a new paragraph at the end of the Regulatory Agreement (i.e. #18 in Form 2466) as follows:

(18) Owners shall establish and maintain, in addition to the Reserve Fund for Replacements, a Residual Receipts Fund by depositing thereto, with the mortgagee, the Residual Receipts within 60 days after the end of the semi-annual or annual fiscal period within which such receipts are realized. Residual receipts shall be disbursed only at the direction of the Secretary, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purposes as the Secretary may determine.

The term "residual receipts" means any cash remaining at the end of a semi-annual or annual fiscal period after deducting from surplus cash the amount of distribution as limited by paragraph 6(e) hereof.

Chapter 7 Appendix 9

ADDENDUM TO REGULATORY AGREEMENT AND/OR CORPORATE CHARTER FOR 207, 233(f), 608, 213 RENTAL, 234 RENTAL, 803, 810, 231(c)4 OR OWNERS OF 220 OR 221(d)(4) PROJECTS WHOSE OWNERS CHOOSE THE ALTERNATE METHOD

Paragraph _____ of the Regulatory Agreement (Corporate Charter) _____ dated _____ in connection with FHA Project No. _____ is hereby amended by adding the following:

As an alternative to the determination of rents by the Secretary based on increases in taxes and operating and maintenance costs, the owner may request and the Secretary shall approve rent levels determined by the owner, provided that:

1. The owner submits a certified appraisal of the property as a rental project.

2. The owner provided a schedule of proposed unit rents and gross potential income.

3. The owner for the initial determination shall [provide an appraisal conducted by a licensed appraiser of the property (based on its use as residential rental property) which includes a rental analysis of comparable conventionally financed rental properties in the area and which shows the proposed rent. For subsequent submissions, the owner may use as qualified appraiser, a certified public accountant, or a certified member of an national housing management organization to perform the rental analysis.

4. The owner agrees that if any units in a project are assisted under the United States Housing Act of 1937, the determination of rent levels for those units receiving such assistance shall be processed in accordance with the applicable section of that Act.

5. Upon request by the owner, and provided there are no violations of this agreement, the Secretary shall approve rental rates based on the lesser of the following methods:

(A) By using the sum of the operating costs as determined by the Secretary and the amount derived by multiplying the debt service factor by the projects' appraised market value as residential rental property to determine the approved Gross Potential Rent; or

(B) By using the comparable rents for similar conventionally financed projects to determine the Gross Potential Rents allowed.

6. The owner agrees that in the event the alternative method of maximum rent determination is requested pursuant to 24 CFR 207.19(e)(2)(ii), which results in the project being or becoming subject to local rent control and, further, that should preemption of those controls be requested, he/she must fully comply with applicable regulations in effect at the time of the request.

Chapter 7 Appendix 10

In Handbook 4350.1, Chapter 7, Appendix 10, see 24 CFR part 246.

Chapter 7 Appendix 11

September 14, 1988

MEMORANDUM FOR: ALL APPROVED MORTGAGES

ATTENTION: Multifamily Mortgagees

FROM: W. Calvert Brand, General Deputy Assistant Secretary

SUBJECT: Requirements for Multifamily Insured Projects

1. Property Insurance Requirements
2. Increases in Replacement Reserve Deposits
3. Investment of Replacement Reserves and Residual Receipts
4. Distribution of Form HUD–9807, Request for Termination of Multifamily Mortgage Insurance

1. *Clarification of Property Insurance Requirements.* 24 CFR 207.260(c) requires that all projects encumbered by FHA insured mortgages must carry hazard insurance policies which meet the requirements of the Federal Housing Commissioner. Since those regulations also make mortgagees responsible for monitoring the adequacy of the coverage and for obtaining insurance when mortgagors fail to do so, several mortgage companies have asked the Department to clarify its insurance requirements for multifamily projects. That clarification follows.

Section 207.10 of the Regulations requires that multifamily projects carry a fire and extended coverage insurance policy in an amount that meets the coinsurance requirements of the insurer and is at least equal to 80 percent of the acutal cash value of the project's insurable improvements and equipment. These insurance requirements apply as long as the mortgage is insured by HUD and regardless of the unpaid principal balance of the mortgage. To determine the amount of insurance required at project completion, mortgagees must use the estimate

of insurable value shown in Form HUD–92329, Property Insurance Schedule. In later years Form HUD–92329's insurable value figures must be updated to reflect changes in construction costs that have occurred since project completion. After the first year of project operation, HUD will consider insurance coverage to be adequate if the insurance coverage met the insurer's coinsurance requirements at the time the policy was issued and:

(a) the policy is endorsed with an agreed amount clause in which the insurer acknowledges the adequacy of the insurance coverage and agrees not to invoke any coinsurance penalty;

(b) the insurer annually certifies that the insurance coverage meets its coinsurance requirements; or

(c) the mortgagor/the insurance agent/the mortgagee annually correctly recomputes the project's insurable clause by applying cost factors published in one of the nationally recognized building cost indices and insurance coverage is increased to 89% (or any higher percentage required by the insurer's coinsurance clause) of the revised insurable value.

If the mortgagor refuse to pay any higher premiums associated with required increases in insurance coverage, the mortgagee must pay the additional premiums and bill the mortgagor for those premiums.

2. *Increase in Monthly Deposits to the Reserve for Replacements.* All projects subject to the replacement reserve provisions of the revised Section 8 New Construction or Substantial Rehabilitation regulations must increase their monthly deposits to the replacement reserve annually by the percentage amount of the annual adjustment approved for that project. The revised regulations apply to all older Section 8 projects whose owners voluntarily opted to be bound by those regulations and, except as noted below, all insured and non-insured projects for which Agreements to Enter Into Housing Assistance Payments Contracts (AHAPs) where executed on or after November 5, 1979 for New Construction projects or February 20, 1980 for Substantial Rehabilitation projects. The replacement reserve requirements of the revised Section 8 regulations do not apply to previously HUD-owned projects sold pursuant to Section 886 (Subpart C), partially assisted projects, or Section 202/8 projects.

While HUD regulations do not require increases in deposits on other projects, regulatory agreements on insured and HUD-held projects do authorize HUD Field staff to approve changes in the amounts of the monthly deposits. When processing rental increases, HUD staff will analyze the adequacy of the deposits and suggest that owners increases the deposits if the increases are needed to meet replacement needs of the project.

Whenever deposits are increased pursuant to either of the two preceding paragraphs, the Field Office will send the mortgagee fee a Form HUD–9250, Reserve for Replacements Authorization. This Form will specify the amount and effective date of the new deposit.

3. *Investment of Reserves for Replacements and Residual Receipts.*

a. Replacement Reserves. The revised Section 8 regulations require that projects subject to those regulations invest the Reserve for Replacements. While HUD regulations do not mandate that other projects invest their Replacement Reserves, HUD encourages owners to do so as prudent investment can offset inflationary increases in repair costs and enhance a project's financial condition. If an owner elects to invest the Replacement Reserve, the Mortgagee's Certificate (Form HUD–92434) provides that the mortgagee must permit the investment. Either the mortgagee or the mortgagor may effect the investment. Mortgagors subject to the revised Section 8 regulations must retain any investment earnings in the Reserve.

Mortgagors not subject to the revised Section 8 regulations must deposit investment earnings in either the project's operating account for the Reserve for Replacements; the choice rests with the mortgagor. Investment earnings may not be distributed directly to mortgagors without regard to surplus cash considerations.

b. *Residual Receipts.* In the past only projects subject to Subpart F of the revised Section 8 regulations were required to invest Residual Receipts. While the Regulatory Agreements for other projects give HUD control over the use and investment of Residual Receipt funds, in the past HUD has elected to allow those mortgagors to choose to invest or not to invest these funds. We are now changing our policy for these projects. Effective immediately, we are requiring that all projects' Residual Receipts be invested and that any earnings on the investment be credited to the Residual Receipts account. Residual Receipts may be invested only in the accounts or securities listed under Paragraph c below. While mortgagors relinquished control over Residual Receipts when they signed the project Regulatory Agreement, at the present time HUD will allow the mortgagors to select among the authorized forms of investment so long as the mortgagor exercises due care and attempts to maximize earnings to the extent consistent with the project's liquidity needs.

c. *Forms of Investment.* Reserves for Replacement and Residual Receipts may be invested in Treasury securities, securities issued by a Federal agency or deposits which are insured by an agency of the Federal government. Acceptable forms of investments are listed in Paragraphs (1) through (4) below. Neither Residual Receipts nor Replacement Reserves may be invested in Repurchase Agreements (REPOS). Investments must be established so as to: (1) Permit the mortgagee to convert the investment to cash at any time; and (2) provide that the investments will at all times be under the control of the mortgagee.

(1) *Direct Obligations of the Federal Government Backed by the Full Faith and Credit of the United States.* These include U.S. Treasury Bills, Notes and Bonds.

(2) *Obligations of Federal Government Agencies.* These include, for example, GNMA Mortgage-Backed Securities, GNMA Participation Bonds and Farm Credit Administration issues.

(3) Demand and Savings Deposits. Demand and savings deposits at commercial banks, mutual savings and loan associations and credit unions are permitted, provided that the entire deposit is insured by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Share Insurance Fund (NCUSIF), or the Federal Savings and Loan Insurance Corporations (FSLIC).

(4) Insured Money Market Deposit Accounts. Investment in money market accounts is permitted, provided that the account is insured by one of the Federal agencies identified in Subparagraph 3c(3) above.

(d) *Choosing Among Available Forms of Investment.* Except as noted below, the mortgagor has the right to determine which of the investments discussed in Paragraph 3c will be used and a mortgagee may not restrict the mortgagor's choice. A mortgagor may authorize a lender to select the form of investment, if the lender is willing to accept that responsibility. If a mortgagor retains the authority to choose among authorized forms of investment, the mortgagee may require the mortgagor to provide written directions as to the type of investment desired. A mortgagee may refuse to honor mortgagor's request for a specific investment only if:

(1) The mortgagee determines that the mortgagor's choice of investment will significantly increase the lender's cost of administering the reserve, and the mortgagee identifies another investment which offers liquidity, security and yield equal to or better than that proposed by the mortgagor; or

(2) The proposed investment does not meet the criteria discussed in Paragraph 3.c. above.

e. *Mortgagee Fees.* The mortgagee may charge a fee for administering invested residual receipts or replacement reserves if the fee is acceptable to the mortgagor. If there is an identity-of-interest between the mortgagee and either the mortgagor or its management agent, the mortgagor must assure that such fees do not exceed the amounts commonly charged when there is no identity-of-interest between the mortgagee and mortgagor. The mortgagor must disclose any such fees in the Replacement Reserve or Residual Receipts supporting schedules to the annual financial statement.

4. *Distribution of Form HUD–9807, Request for Termination of Multifamily Mortgage Insurance.* The mortgagee is required to submit Form HUD–9807 when the mortgage is prepaid or the mortgagor and mortgagee agree to terminate the mortgage insurance. Instructions printed on Form HUD–9807 direct mortgagees to mail the form only to HUD Headquarters. To increase the accuracy of Field Office portfolio listings and address lists, we are now asking that mortgagees mail all HUD–9807 requests to both HUD Headquarters and the HUD Field Office having jurisdiction over the project in question. The Field Office's copy should be sent to the attention of the Housing Division Director.

Chapter 7 Appendix 12

Suggested form of letter for use with appropriate modifications for type of project and situation by Housing Management Division Directors in accordance with Section 4, Paragraph 8(c)(3).

Certified Mail

Return Receipt Requested

According to our records, you have received a previous letter from the Office of Finance and Accounting, Department of Housing and Urban Development, requesting submission of page 1 of Form (HUD–93104) (HUD–93104A), Monthly Report of excess of Income, and the excess income collected, if any, for the month(s) * * *. This report is required to be submitted monthly from all projects even in cases where there is no excess income.

You are hereby notified that, unless the requested page 1 of Form (HUD–93104) (HUD–93104A), Monthly Report of Excess Income, and any excess income collected for the month(s) of * * * are remitted to the Office of Finance and Accounting, Department of Housing and Urban Development, Attention: Billing and Receivable Division, 451 7th Street, S.W., Washington, D.C. 20410, within thirty (30) days of the date of this letter, the interest reduction payments to the mortgagee on behalf of this project, beginning with the next payment falling due, will be suspended or terminated in accordance with paragraph * * * of the (Regulatory Agreement) (Interest Reduction Contract).

Should such suspension occur, you will be liable to the mortgagee for the full amount of the next mortgage payment falling due. Your failure to make the full mortgage payment within the usual time limit may result in a default under the terms of the Mortgage which will be handled in accordance with regular default procedures. (This last sentence is applicable to insured and HUD-held projects only.)

You are strongly urged to contact this office immediately if there are any factors beyond your control or of an unusual nature which will prevent your immediate compliance with the above requirements. (To be signed by Housing Management Division Director.)

Chapter 7 Appendix 13

INSTRUCTIONS FOR OWNERS TO USE IN PREPARING RENT SCHEDULE (FORM HUD–92458)—FOR NON-PROFIT AND LIMITED DIVIDEND PROJECTS

Part A. Does the monthly potential you are proposing exceed the Maximum Allowable Potential HUD most recently approved?

a. If *YES,* complete ONLY COLUMNS 1 and 2 of this Part. HUD or the State Agency will complete Part A after processing your request for an increase.

b. If *NO,* complete ALL of Part A.

Column 1. Show each type of unit for which rents will vary. Show the number of bedrooms and bathrooms and other features that cause rents to vary (e.g., 2 BDM, 1 B, DA, KETTE, vs 2 BDM, 2 B, DR, K). Use the following symbols:

BDM—Bedroom
B—Bath
K—Kitchen
KETTE—Kitchenette
LR—Living Room
DR—Dining Room
DA—Dining Alcov

Column 2. Show the number of units for each unit type. Include non-revenue producing units.

Important: Complete columns 3 through 8 only if the instructions in part A, paragraph b direct you to do so.

Column 3.

a. *BMIR, section 236, rent supplement and section 8 projects.* Enter the CONTRACT rent for each unit type. (For a definition of contract rent, see Paragraph 3–23 of Handbook 4350.3)

b. *All other projects.* Enter the rent you intend to charge for each unit type.

Column 4.

a. For each line, multiply the contract rent in Column 3 by the number of units in Column 2.

b. Compute the monthly and annual *contract* rent potential. Follow the instructions on the form.

Columns 5 and 6. Complete these columns only for subdidized projects that use utility allowances.

BILLING CODE 4210–01–M

Rent Schedule

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0012 (Exp. 7-31-90)

Project Name	FHA Project Number	Date Rents Will Be Effective (Month, Year)

Part A – Apartment Rents

Show the actual rents you intend to charge, even if the total of these rents is less than the Maximum Allowable Monthly Rent Potential.

Col. 1 Unit Type (Include Non-revenue Producing Units)	Col. 2 Number of Units	Contract Rents: Col. 3 Rent Per Unit	Contract Rents: Col. 4 Monthly Contract Rent Potential (Col. 2 × Col. 3)	Col. 5 Utility Allowances (Effective Date: __/__/__)	Col. 6 Gross Rent (Col. 3 + Col. 5)	Market Rents (Sec. 236 Projects Only): Col. 7. Rent Per Unit	Market Rents (Sec. 236 Projects Only): Col. 8 Monthly Market Rent Potential (Col. 2 × Col. 7)
Total Units		Monthly Contract Rent Potential (Add Col. 4) *				Monthly Market Rent Potential (Add Col. 8) *	
		Yearly Contract Rent Potential (Col. 4 Sum x 12) *				Yearly Market Rent Potential (Col. 8 Sum x 12) *	

* These amounts may not exceed the Maximum Allowable Monthly Rent Potential approved on the last Rent Computation Worksheet or requested on the Worksheet you are now submitting. Market Rent Potential applies only on Section 236 Projects.

Part B – Items Included in Rent

Equipment/Furnishings in Unit: (Check those included in rent.)

☐ Range	☐ Dishwasher	☐ _____
☐ Refrigerator	☐ Carpet	☐ _____
☐ Air Conditioner	☐ Drapes	☐ _____
☐ Disposal	☐ _____	☐ _____

Utilities: (Check those included in rent. For each item, (even those not included in rent), enter E, F, or G on line beside that item): E = electric; G = gas; F = fuel oil or coal.

☐ Heating _____	☐ Hot Water _____	☐ Lights, etc. _____
☐ Cooling _____	☐ Cooking _____	☐ _____

Services/Facilities (check those included in rent)

☐ Parking	☐ _____	☐ Nursing Care
☐ Laundry	☐ _____	☐ Linen/Maid Svc.
☐ Swimming Pool	☐ _____	☐ _____
☐ Tennis Courts	☐ _____	☐ _____

Part C – Charges in Addition to Rent (e.g., parking, cable TV, meals)

Purpose	Monthly Charge
	$
	$
	$
	$
	$
	$
	$

Part D – Non-Revenue Producing Space

Col. 1 Use	Col. 2 Unit Type	Col. 3 Contract Rent
Total Rent Loss Due to Non-Revenue Units		$

Part E. – Commercial Space (retail, offices, garages, etc.)

Col. 1 Use	Col. 2 Monthly Rent Potential	Col. 3 Square Footage	Col. 4. Rental Rate Per Sq. Ft. (Col. 2 ÷ Col. 3)
	$	Total Commercial Rent Potential	

Part F. – Maximum Allowable Rent Potential

Enter Maximum Allowable Monthly Rent Potential From Rent Computation Worksheet (to be completed by HUD or lender) $ _____

Previous Editions are Obsolete

HUD-92458.3 (9-84)

Part G - Information on Mortgagor Entity

Name of Entity

Type of Entity

Individual ☐ General Partnership ☐ Joint Tenancy/Tenants in Common ☐ Other (specify) _____

Corporation ☐ Limited Partnership ☐ Trust

List all Principals Comprising Mortgagor Entity: provide name, title and Social Security Number or Employer Identification Number (EIN) of each principal. Use extra sheets, if needed. If mortgagor is a:

- corporation, list: (1) all officers; (2) all directors; and (3) each stockholder having a 10% or more interest.
- partnership, list: (1) all general partners; and (2) limited partners having a 25% or more interest in the partnership.
- trust, list: (1) all managers, directors or trustees and (2) each beneficiary having at least a 10% beneficial interest in the trust.

Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number
Name and Title	Social Security or EIN Number

Part H - Owner Certification

I certify that all of the information on this form is accurate. I also understand that 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000, or imprisoned for not more than five years, or both.

Name and Title	Authorized Official's Signature and Date

Part I - HUD/Lender Approval

Loan Servicer's Signature and Date	Branch Chief/Lender Official Signature and Date

BILING CODE 4210-01-C

BOARD FOR INTERNATIONAL BROADCASTING

SES Performance Review Board; Membership

Section 4314 (c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Because of the Board for International Broadcasting's small size, a Performance Review Board register is established in which SES members from other small agencies participate. This notice is to establish a PRB for the Board for International Broadcasting. The members whose names appear are:

Lindley S. Sloan, Executive Director, Japan/U.S. Friendship Commission (PRB Chairman).
Jeffrey S. Lubbers, Research Director, Administrative Conference of the U.S.
Gary Edles, Legal Counsel, Administrative Conference of the U.S.

Dated: November 10, 1988.

Bruce D. Porter,

Executive Director.

[FR Doc. 88-26765 Filed 11-17-88; 8:45 am]

BILLING CODE 6155-01-M

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

[UT-940-09-4212-11; U-49006]

Classification Termination and Opening Order, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a Recreation and Public Purposes classification and provides for a limited opening order.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303, (801) 524-4036.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2450.6, the Bureau of Land Management hereby terminates Recreation and Public Purposes Classification U-49006 which involves the following described lands:

Salt Lake Meridian

T. 11 N., R. 18 W.,
Sec. 10, E½SE¼NW¼

The area described contains 20 acres located in Box Elder County.

In response to an application filed by the County of Box Elder in 1981, the subject lands were classified as suitable for disposal under Recreation and Public Purposes Act (43 U.S.C. 869 et seq).

The classification provided for segregation of the lands against all forms of appropriation under the public land laws, including location under mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws. A 25-year lease was subsequently issued to Box Elder County for sanitary landfill purposes.

The County would now like to acquire unrestricted title to the lands pursuant to section 203 of the Federal Land Policy and Management Act (43 U.S.C. 1713). At 10:00 a.m., on December 15, 1988, the Recreation and Public Purposes classification will be terminated and the lands described above will be open only to disposal pursuant to section 203 of the Federal Land Policy and Management Act, to Box Elder County at fair market value, subject to any valid existing rights, and the requirements of applicable laws, rules and regulations.

William R. Papworth,

Acting State Director.

[FR Doc. 88-26716 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-DQ-M

Bureau of Land Management

Beaver Creek Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) prepared a final environmental impact statement (FEIS) covering placer mining within the drainage of the Beaver Creek National Wild River.

The drainage area is located approximately 50 air miles north of Fairbanks, Alaska, and constitutes nearly 1.2 million acres of land, encompassing most of the White Mountains National Recreation Area.

Primarily, the issues addressed are the cumulative impacts of multiple mining operations on the environment (particularly water quality), subsistence uses in and around the study area, and BLM permitting and monitoring procedures under the Alaska National Interest Lands Conservation Act.

Comments on the draft EIS have been considered in the preparation of this document. A proposed action and four alternatives present management options ranging from emphasis on enforcement of regulations under 43 CFR 3809 to a "no mining" alternative. The proposed action has been modified from the draft document to include enforcement of water quality standards of the Environmental Protection Agency and the State of Alaska, and to emphasize reclamation. The environmental consequences of all the alternatives are analyzed and presented.

DATES: The 30-day wait period for the FEIS will begin on the day that the Environmental Protection Agency publishes its Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Page Spencer, Project Manager, U.S. Bureau of Land Management, Alaska State Office, section 918, 701 C Street, Box 13, Anchorage, AK 99513 or at (907) 271-3114.

Michael J. Penfold,

State Director.

[FR Doc. 88-25984 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-JA-M

[CA-930-08-4341-09]

Availability of Record of Decision: California Vegetation Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of record of decision for the California Vegetation Management Program.

SUMMARY: Notice is hereby given of the availability of the Record of Decision for the California Vegetation Management Program on BLM administered lands in California and northwest Nevada. The Record of Decision adopts the Proposed Action from the California Vegetation Management Final EIS. Copies of the decision may be obtained by writing to the address below.

DATE: Appeals must be filed with the State Director, California State Office at the address below on or before December 19, 1988 in accordance with the requirements of 43 CFR Part 4, Subpart E.

ADDRESS: Copies of the decision may be obtained from: Mark Blakeslee, Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825, (916) 978-4725.

FOR FURTHER INFORMATION CONTACT: Mark Blakeslee, California State Office, (916) 978–4725.

Date: November 9, 1988.

Ed Hastey,

State Director.

[FR Doc. 88–26666 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–40–M

[CO–030–09–4351–081]

Gunnison Basin Management Framework Plan; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) proposes to change the 1980 Gunnison Basin Management Framework Plan (MFP). The proposed changes address potential reintroductions of bighorn sheep and pronghorn into areas that presently do not contain these animals.

DATE: Comments must be received by December 19, 1988.

ADDRESS: Submit written comments to: Bureau of Land Management, Gunnison Resource Area, 216 N. Colorado, Gunnison, Colorado 81230; telephone (303) 641–0471.

FOR FURTHER INFORMATION CONTACT: Joe Capodice, BLM Gunnison Resource Area; telephone (303) 641–0471.

SUPPLEMENTARY INFORMATION: In April 1987, the Colorado Division of Wildlife (DOW) requested authorization to transplant bighorn sheep into Cochetopa Canyon and pronghorn into Chance Gulch area. Both sites are located southeast of Gunnison, Colorado.

An interagency team of BLM and DOW staff specialists will analyze issues and concerns relating to the proposed action. Anticipated issues and management concerns include: 1) Habitat suitability to support these new herds, 2) competition between the proposed herds and other game animals now using these areas, 3) competition between pronghorn, bighorn sheep and livestock, and 4) future and existing constraints on other resources.

Planning criteria include: A) Provide for the maintenance of health viable breeding populations of bighorn sheep and pronghorn antelope, B) provide habitat to maintain 250 pronghorn in the Chance Gulch area and 150 bighorn in Cochetopa Canyon, and C) consider designating the class of livestock in the Cochetopa Canyon area to reduce future conflict with bighorn sheep. An environmental assessment (EA) addressing the proposed action and a non-action alternative will be prepared.

Information on the proposed plan amendment will be sent to affected grazing permittees, local newspapers and other interested parties. Additional information is available at the BLM Gunnison Resource Area Office.

Dated: November 10, 1988.

Alan L. Kesterke,

District Manager, Montrose.

[FR Doc. 88–26748 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–JB–M

[ID–020–09–4212–13]

Intent To Amend the Twin Falls Management Framework Plan; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Amend the Twin Falls Management Framework Plan.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1610.2(c) that the Burley District is proposing to amend the Twin Falls Management Framework Plan to allow for disposal of the following described public lands through private exchange:

T.14S., R.15E., B.M.
Section 13: SE¼NE¼,S½
Section 24: E½,E½,W½
Section 25: All
Section 26: E½NE¼
T.15S., R.15E., B.M.
Section 2: Lot 1, SE¼NE¼, NE¼SE¼
T.14S., R.16E., B.M.
Section 18: Lot 7, E½SW¼,W½SE¼
Section 19: Lots 1,2,3,4, E½W½
Section 29: NW¼
Section 30: Lot 1, N½NE¼, NE¼NW¼
T.15S., R.16E., B.M.
Section 17: SW¼NE¼,W½SE¼, SE¼SE¼
Section 20: NE¼

Comprising 2923.19 acres of public land.

The subject lands are located south and southwest of Rogerson, Idaho. Highway 93 transects a portion of the subject lands approximately three miles southwest of Rogerson.

A land use plan amendment and environmental assessment document will be prepared for the subject lands. The documents will be prepared by a BLM interdisciplinary term representing the wildlife, range, watershed, recreation, cultural resources, and realty disciplines. Public participation will involve the publication of this notice in the Federal Register and local newspapers. The adjoining landowners, grazing permittees, Twin Falls County Commissioners, Burley District Grazing Advisory Board, Burley District Advisory Council, and the Idaho Department of Fish and Game will be asked for comments. As public controversy is anticipated to be low for the proposed action, no public meetings, hearings, or conferences are planned.

The issues anticipated for the exchange proposal include whether it is in the public's best interest to transfer deer winter range and sagegrouse habitat out of public ownership through the exchange, and will deer and fishing access to the Shoshone Basin area be adversely affected by the proposed exchange. The exchange will block up public and privage lands in the Shoshone Basin area, and allow for the acquisition of three miles of perennial stream and riparian habitat.

The existing land use plan and maps are available for review at the Burley District Office, Burley, Idaho.

The public may obtain additional information about the exchange proposal by contacting the Bureau of Land Management, Attn. Ted S. Milesnick, Route 3, Box 1, Burley, Idaho 83318, (208) 678–5514.

Date: November 10, 1988.

Gerald L. Quinn,

District Manager.

[FR Doc. 88–26750 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–GG–M

[ID–040–4320–10]

Salmon District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATE: The meeting will be held on Thursday, January 5, 1989, at the Salmon District Office, Bureau of Land Management, Conference Room, Highway 93 South, Salmon, Idaho 83467. The meeting will begin at 10:00 a.m.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92–463. The meeting is open to the public; public comments on agenda items will be accepted from 1:00 to 1:30 p.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467 by December 27, 1988. The agenda items are (1) purchasing of materials, (2) FY 88 completed projects, (3) advisory board proposed projects, (4) 8100 Projects, (5)

allotment management plans, (6) drought, (7) any other issues dealing with grazing management in the Salmon District.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:15 p.m.) within 30 days after the meeting.

FOR FURTHER INFORMATION, CONTACT: Robert W. Heidemann, Acting District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467 (phone 208/756–5400).

Dated: November 9, 1988.

Robert W. Heidemann,

Acting District Manager.

[FR Doc. 88–26668 Filed 11–17–88; 8:45 am]

BILLING CODE 4310-GG-M

[(NV–930–09–4212–11; N–41565–14)]

Realty Action; Lease/Purchase For Recreation and Public Purposes Clark County, NV

The following described public land in the City of Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T.21S., R.60E.,
Sec. 4, lots 49 and 50
Aggregating 10.350 acres (gross)

This parcel of land contains approximately 10.350 acres. The Clark County School District intends to use the land for an elementary school The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.
2. Those rights for transmission line purposes which have been granted to Nevada Power Company by Permit No. NEV–044109 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any deverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this notice will become effective 60 days from the date of publication in the **Federal Register.**

Date: November 7, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 88–26661 Filed 11–17–88; 8:45 am]

BILLING CODE 4310-HC-M

[NV–930–09–4212–11; N–41565–11]

Realty Action; Lease/Purchase For Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T.21S., R.60E.,
Sec. 15, NW¼SW¼
Aggregating 40 acres (gross)

This parcel of land contains approximately 40 acres. The Clark County School District intends to use the land for a high school site. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.
2. Those rights for telephone and powerline purposes which have been granted to Central Telephone Company/Nevada Power Company by Permit No. N–24663 under the Act of October 21, 1976 (90 Stat. 2776); 43 U.S.C. 1761.
3. Those rights for waterline purposes which have been granted to the Las Vegas Valley Water District by Permit No. N–24659 under the Act of October 21, 1976 (90 Stat. 2776); 43 U.S.C. 1761.
4. Any development and proposed development of a parcel affected by the 100-year flood plain shall be subject to review and regulations by Clark County Department of Public Works, Flood Control Division for flood control and storm water management.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 5765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register.**

Date: November 7, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV).

FR Doc. 88-26662 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-11; N-41565-08]

Realty Action; Lease/Purchase For Recreation And Public Purposes Clark County, NV

The following described public land in the City of Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T.20S., R.60E.,
Sec. 22, SE¼NW¼SE¼

Aggregating 10 acres (gross)

This parcel of land contains approximatley 10 acres. The Clark County School District intends to use the land for an elementary school. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this notice will become effective 60 days from the date of publication in the **Federal Register.**

Date: November 7, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 88-26663 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-11; N-41565-12]

Realty Action; Lease/Purchase for Recreation and Public Purposes; Clark County, NV

The following described public land in the City of Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The land will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T.20S., R.60E.,
Sec. 22, NE¼NW¼

Aggregating 40 acres (gross)

This parcel of land contains approximately 40 acres. The Clark County School District intends to use the land for a high school site. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.
2. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. Nev-061618 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).
3. Those rights for powerline and telephone line purposes which have been granted to the Las Vegas Valley Water District by Permit No. N-17000 under Pub. L. 83-666.
4. Those rights for flood detention basin purposes which have been granted to the City of Las Vegas by Permit No. N-37223 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register.**

Date: November 7, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 88-26664 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-11; N-48674]

Realty Action; Lease/Purchase For Recreation and Public Purposes Clark County, NV

The following described public land in Moapa, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 14 S., R. 66 E.,
Sec. 34, N½SW¼NW¼SE¼, S½NW¼-NW¼SE¼, SE¼SW¼NW¼SE¼.
Aggregating 15 acres (gross)

This parcel of land contains approximately 15 acres. The Clark County School District intends to use the land for an elementary school site. The lease and/or patent, when issued, will be subject to the provision of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All mineral shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

2. Those rights for transmission line purposes which have been granted to Overton Power District by Permit No. NEV-044096 under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

3. Those rights for transmission line purposes which have been granted to Overton Power District by Permit No. CC-020948 under the Act of December 21, 1928 (45 Stat. 1057; 43 U.S.C. 617D).

4. Those rights for highway purposes which have been granted to Nevada Department of Transportation by Permit No. NEV-060130 under the Act of November 9, 1921 (42 Stat. 216).

5. Those rights for a range improvement fence which have been granted to Charles Hester by Permit No. 4019 under Section 4 of the Taylor Grazing Act.

6. An easement 80 feet in width, 40 feet on each side of the centerline, for the existing county road known as Henry Road, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register.**

Date: November 7, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 88-26665 Filed 11-17-88; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-14; N-41595]

Realty Action; Non-Competitive Sale of Public Land in Lyon County, NV

The following described parcels, comprising 170 acres, have been examined and identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the fair market value:

Parcel A

T. 20 No., R. 24 E.,
Sec. 36, NW¼NW¼SE¼, S½NW¼SE¼, S½SE¼.
Aggregating 110 acres.

Parcel B

T. 20 N., R. 25 E.,
Sec. 32, N½NE¼SW¼, NW¼SW¼.
Aggregating 60 acres.

Upon publication of this notice in the **Federal Register,** the described land shall be segregated from appropriation under the public land and mining laws, excepting the mineral leasing laws. This segregative effect shall terminate upon issuance of a patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of this publication, whichever comes first.

The parcel will be offered by direct sale to Nevada Cement Company. Nevada Cement Company has utilized this property in the past in conjunction with a limestone quarry operation located on adjacent private land, and has made a substantial investment in improvements on this public land.

The proposed sale is consistent with Bureau land use plans and local government planning. The land, because of its location and other characteristics, is difficult and uneconomic to manage as a part of the public lands and is not suitable for management by another Federal department or agency.

Patent for the parcel when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. (A more detailed description of this reservation which will be incorporated in the patent document, is available for review at this BLM Office.)

The reservation will be modified if the patentee elects to purchase the mineral interests of the United States in accordance with section 209(b)(1)(l) of Pub. L. 94-579.

Acceptance of an offer will constitute an application to purchase the mineral estate having no known mineral values, and will require payment of a $50.00 nonrefundable fee.

Since Parcel A has no known mineral values, all mineral interests may be conveyed simultaneously with the surface estate. Parcel B is classified prospectively valuable for geothermal steam and associated geothermal resources and sodium and potassium compounds. All mineral interests in Parcel B excepting geothermal steam and sodium and potassium may be purchased simultaneously with the surface estate. The geothermal and

sodium and potassium portions of the mineral estate can only be sold in accordance with section 209b(l)(2) of Pub. L. 94–579 at fair market value.

The patent will also be subject to: Those rights for highway purposes which have been granted to the State of Nevada, Department of Transportation, its successors or assigns, by right-of-way grant CC–020699.

Detailed information concerning the sale is available for review at the Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701.

The land will be offered for sale no earlier than 60 days from the date of publication of this notice in the **Federal Register**. For a period of 45 days from the publication of this notice, interested parties may submit comments to the Carson City District Manager. Any adverse comments will be evaluated and this notice will be upheld, modified or vacated.

In the absence of any objections, this Realty Action will become the final determination of the Department of the Interior.

Dated this 9th day of November, 1988.

James W. Elliott,

District Manager.

[FR Doc. 88–26751 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–09–4212–11; N–41986]

Realty Action; Lease or Conveyance of Public Lands for Recreation and Public Purposes Washoe County, NV

The following described public land has been identified as suitable and will be classified for lease or conveyance under the Recreation and Public Purposes Act (43 U.S.C. 869, et seq.):

Mt. Diablo Meridian, Nevada

T. 20 N., R. 20 E.,
Sec. 26, SW¼SE¼SW¼, W½SE¼S E¼SW¼.

The land aggregates 15 acres. The applicant, the City of Sparks, Nevada proposes to use the land for a recreational park.

The land is not required for a federal purpose. Disposal is consistent with the bureau's planning for the area and would be in the public interest.

The lease when issued will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of Interior. Patent if issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States pursuant to the Act of August 30, 1890 (43 USC 945).

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of Interior may prescribe.

And will be subject to:

1. Powerline rights-of-way CC–025152, NEV–065144 and N–30813—Sierra Pacific Power Company.

2. Access Road right-of-way N–39897—City of Sparks.

3. The rights associated with the operation and maintenance of the Cinnabar Hill ditch under the Legislative Act of 1866.

Detailed information concerning this action is available for review at the Bureau of Land Management Office, Carson City District Office.

Upon publication of this Notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws and the general mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89406. Any adverse comments will be reviewed by the State Director. In the absence of adverse comments the classification of the land described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Dated this 3rd day of November 1988.

James W. Elliott,

District Manager.

[FR Doc. 88–26699 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–050–9–4212–13]

Arizona: Resource Management Planning; Yuma District Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Notice of Intent to File Category I Amendment to Yuma District Resource Management Plan and Notice of Availability of Yuma District Resource Management Plan Amendment, Decision Record, and Public Comment Period.

This corrects **Federal Register** notices printed in Vol. 53, No. 16, January 26, 1988, p. 2095, and Vol. 53, No. 105, June 1, 1988, p. 20025. Additional acres of public land now identified for disposal are 445 acres instead of 425 acres as identified in the Notice of Intent and 432 acres as identified in the Notice of Availability. In legal description for T. 3 N., R. 21 W., G&SRM, AZ, add lot 10 to the already identified lot 9 in sec. 3. The acreage designated for disposal is increased to 56,205 from 56,192 acres.

Herman L. Kast,

District Manager.

Date: November 10, 1988.

[FR Doc. 88–26667 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–32–M

[AA 340 09 4332 02]

Interim Management Policy and Guidelines for Lands Under Wilderness Study Review

AGENCY: Bureau of Land Management, Interior.

ACTION: Reissuance of the interim management policy and guildelines for lands under wilderness study review.

SUMMARY: The Interim Management Policy and Guldelines for Lands Under Wilderness Review, first published in the **Federal Register** on December 12, 1979 (44 FR 72014), and revised on July 12, 1983 (48 FR 31854), has been reissued as a Bureau of Land Management Manual and a Handbook for Field Office use. The Manual and Handbook are now included in the Bureau of Land Management Directives system under the 8550 subject function series.

FOR FURTHER INFORMATION CONTACT: Elizabeth Owen, Division of Recreation, Cultural and Wilderness Resources, Bureau of Land Management, 18th and C Sts., NW., Room 3360 Main Interior Bldg., Washington, DC. 20240. Telephone (202) 343–6064.

EFFECTIVE DATE: November 18, 1988.

SUPPLEMENTARY INFORMATION: Copies may be obtained by contacting the appropriate BLM State Office. Addresses are listed below:

Terry O'Sullivan, Wilderness Coordinator, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

Jim Currivan, Wilderness Coordinator, Bureau of Land Management, 3707 N. 7th Street, P.O. Box 16563, Phoenix, Arizona 85011.

Richard Barbar, Acting Wilderness Coordinator, Bureau of Land Management, 2800 Cottage Way, E–2841, Sacramento, California 95825–1889.

Eric Finstick, Wilderness Coordinator, Bureau of Land Management, 2850

Youngfield Street, Lakewood, Colorado 80215.
George Nelson, Wilderness Coordinator, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.
Bob Lund, Wilderness Coordinator, Bureau of Land Management, 222 N. 32nd Street, P.O. Box 36800, Billings, Montana 59107.
Dave Wolf, Wilderness Coordinator, Bureau of Land Management, 850 Harvard Way, Reno, Nevada 89520.
Jon Joseph, Wilderness Coordinator, Bureau of Land Management, P.O. Box 1449, South Federal Place, Santa Fe, New Mexico 87504–1449.
Dave Harmon, Wilderness Coordinator, Bureau of Land Management, P.O. Box 2965, 825 N.E. Multnomah Street, Portland, Oregon 97208.
Greg Thayn, Wilderness Coordinator, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111–2303.
Wayne Erickson, Wilderness Coordinator, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

Robert F. Burford,

Director, Bureau of Land Management.

November 7, 1988.

[FR Doc. 88–26739 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–84–M

[ES–940–09–4520–13; (ES–039797, Group 81)]

Arkansas; Filing of Plat of Dependent Resurvey

Novembr 10, 1988.

1. The plat, in eight sheets, of the dependent resurvey of the south boundary, Township 15 North Range 22 West, the east boundary, Township 14 North, Range 23 West, the east boundary, the subdivisional lines and survey of the subdivision of sections, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 15 and 17, and certain exceptions to U.S. Forest tracts in sections 3, 5, and 8, and U.S. Forest Service Tract No. 1454 in section 17, Township 14 North, Range 22 West, Fifth Principal Meridian, Arkansas will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on December 27, 1988.

2. The survey was made at the request of the U.S. Forest Service.

3. All inquires or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., December 27, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88–26749 Filed 11–17–88; 8:45 am]

BILLING CODE 4310–GJ–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31344]

900 Partners' Investments; Control Exemption; Amfac, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, acquisition of control by 900 Partners' Investments, of Amfac, Inc., and through Amfac, Inc., its control of Fred Harvey Transportation Company, subject to the conditions for the protection of railroad employees in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

DATES: This decision is effective November 21, 1988. Petitions for reconsideration must be filed by December 8, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31344 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representative: Scott N. Stone, 2550 M Street, NW., Washington, DC 20037–1350.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: November 10, 1988.

By the Commission: Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Simmons did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88–26729 Filed 11–17–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–240 (Sub-2X)]

Cambria and Indiana Railroad Co.—Abandonment Exemption—in Indiana and Cambria Counties, PA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 14.447-mile line of railroad between Manver (milepost 20.746) and Holmen (milepost 6.299), and its 2.52-mile Nanty-Glo Branch that intersects the main line at I.C.C. Station 7+702, all located in Indiana and Cambria Counties, PA.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

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 December 18, 1988 (unless stayed pending reconsideration). Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by November 28, 1988. Petitions to stay regarding matters that do not involve environmental issues [2] and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 8, 1988 with: Office of the Secretary, Case Control Branch,

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[1] *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).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph M. O'Malley, 1275 Daly Avenue, Bethlehem, PA 18015.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment. The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 23, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 9, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–26516 Filed 11–17–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub-22X)]

The Georgia Midland Railway Co.—Abandonment Exemption—Between Towalaga and Griffin, GA

The Georgia Midland Railway Company (Georgia Midland) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.78-mile line or railroad between milepost 9.72–M near Towalaga and milepost 16.5–M near Griffin, GA.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service on the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use 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 December 18, 1988, unless stayed pending reconsideration. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by November 28, 1988. Petitions to stay regarding matters that do not involve environmental issues [2] and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 8, 1988, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Attorney, 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*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 23, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 10, 1988.

[1] *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).

[2] 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.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–26517 Filed 11–17–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31352]

Gloster Southern Railroad Co.; Modified Rail Certificate

November 9, 1988.

The Gloster Southern Railroad Company (Gloster) filed for a modified certificate of public convenience and necessity under 49 CFR 1150.23. By contract with the Marion County Railroad Authority (Authority), Gloster was authorized to provide rail service between milepost 94 at Columbia, MS, and the interchange with the Illinois Central Railroad Company (Illinois Central) at milepost 121.14 at Silver Creek, MS, a distance of approximately 28.78 miles.

The line was formerly owned and operated by Illinois Central and was authorized for abandonment in Docket No. AB–43 (Sub-No. 71), dated September 10, 1981, served September 14, 1981. Subsequent to the abandonment becoming effective on December 31, 1981, the abandoned line was purchased by Authority and operated by the Columbia and Silver Creek Railroad Company (CSC) under a modified certificate of public convenience and necessity. Authority entered into a lease and operating agreement with Gloster. The agreement is for a 10-year period with two additional renewal options each for 5 years. Gloster, Authority, and CSC have agreed that on November 1, 1988, Gloster will replace CSC as operator of the line.

A copy of this modified certificate notice shall be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–26514 Filed 11–17–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31319]

Indiana & Ohio Central Railroad, Inc.; Modified Rail Certificate

November 8, 1988.

The Indiana & Ohio Central Railroad, Inc. ("IOC") filed for a modified certificate of public convenience and necessity under 49 CFR 1150.23. By contract with the City of Greenfield, OH, IOC was authorized to provide rail freight service on 29.49 miles of rail line between milepost 44.96 near Midland City, OH and milepost 74.45, at Thrifton, OH, in Highland, Clinton, and Ross Counties.

This line was formerly owned and operated by CSX Transportation, Inc. (CSX) and was authorized for abandonment between Thrifton and Midland City in Docket No. AB–55 (Sub-No. 243), *CSX Transportation, Inc.—Abandonment—Between Thrifton and Midland City in Highland, Clinton, and Ross Counties, OH* (not printed), served May 31, 1988, as corrected by notice to the parties served June 24, 1988.

The City of Greenfield acquired the line from CSX and entered into a lease and operating agreement with IOC, which was to have taken effect on October 28, 1988. The agreement is for a 15-year period.

A copy of this modified certificate notice shall be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–26515 Filed 11–17–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modification issued, must be made part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC88–1 (Jan. 8, 1988) ..... pp. 81–82
Florida:
FL88–1 (Jan. 8, 1988) ..... p. 100
FL88–2 (Jan. 8, 1988) ..... p. 104
FL88–3 (Jan. 8, 1988) ..... p. 108
FL88–5 (Jan. 8, 1988) ..... p. 116
FL88–7 (Jan. 8, 1988) ..... p. 120
FL88–8 (Jan. 8, 1988) ..... p. 122
FL88–9 (Jan. 8, 1988) ..... p. 124
FL88–10 (Jan. 8, 1988) ..... p. 126
FL88–12 (Jan. 8, 1988) ..... p. 130
FL88–17 (Jan. 8, 1988) ..... p. 144
Maryland:
MD88–1 (Jan. 8, 1988) ..... p. 416
MD88–11 (Jan. 8, 1988) ..... p. 444
New York:
NY88–2 (Jan. 8, 1988) ..... p. 690
NY88–3 (Jan. 8, 1988) ..... p. 702
NY88–6 (Jan. 8, 1988) ..... p. 730
NY88–7 (Jan. 8, 1988) ..... p. 741
NY88–12 (Jan. 8, 1988) ..... p. 792
NY88–18 (Jan. 8, 1988) ..... p. 830
Pennsylvania:
PA88–8 (Jan. 8, 1988) ..... pp. 912, 914
PA88–10 (Jan. 8, 1988) ..... p. 930
PA88–15 (Jan. 8, 1988) ..... p. 954
PA88–16 (Jan. 8, 1988) ..... p. 958
PA88–19 (Jan. 8, 1988) ..... p. 974, 976
PA88–20 (Jan. 8, 1988) ..... p. 981

Volume II

Iowa:
IA88–4 (Jan. 8, 1988) ..... p. 38
IA88–5 (Jan. 8, 1988) ..... pp. 42–46
IA88–6 (Jan. 8, 1988) ..... pp. 52–53
Indiana:
IN88–1 (Jan. 8, 1988) ..... p. 235
IN88–2 (Jan. 8, 1988) ..... p. 249
IN88–3 (Jan. 8, 1988) ..... pp. 266–267
IN88–5 (Jan. 8, 1988) ..... pp. 290, 292
Kansas:
KS88–6 (Jan. 8, 1988) ..... p. 346

Texas:
TX88–10 (Jan. 8, 1988) ..... p. 960
Volume III
Idaho:
ID88–1 (Jan. 8, 1988)..... p. 142
North Dakota:
ND88–1 (Jan. 8, 1988)..... p. 222
ND88–3 (Jan. 8, 1988)..... p. 234
ND88–4 (Jan. 8, 1988)..... p. 236

General Wage Determination Publication

General Wage determinations under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of November 1988.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 88–26513 Filed 11–17–88; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

[Docket No. S–024]

Shipyard Employment Standards Advisory Committee

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

ACTION: Appointment of members of Shipyard Employment Standards Advisory Committee (SESAC); notice of meeting.

SUMMARY: This Notice announces the selection of the 15 members of the Shipyard Employment Standards Advisory Committee and schedules the first meeting of that committee.

DATES: The first meeting of SESAC will begin on Tuesday, December 13, 1988, at 9:30 a.m. The meeting will continue on Wednesday, December 14, 1988.

Persons wishing to make presentations to the committee at this meeting should submit written requests by Tuesday, December 6, 1988.

ADDRESSES: The SESAC meeting will be held at the Washington Court Hotel (formerly the Sheraton Grand), 525 New Jersey Avenue, NW., Washington, DC.

Persons wishing to make presentations to the committee should submit written requests to Mr. Thomas Hall, OSHA Division of Consumer Affairs, U.S. Department of Labor, Room N3647, Docket S–024, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, at the address listed above, telephone (202) 523–8617.

SUPPLEMENTARY INFORMATION: The Shipyard Employment Standards Advisory Committee (SESAC) was established by the Secretary of Labor on June 27, 1988 (53 FR 24156), in accordance with the provision of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. I).

Authority to establish SESAC is found in sections 4(b)(2), (6)(b), and 7(b) of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 656); section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); and by general agency authority in Title 5 of the United States Code. The committee was established to advise the Assistant Secretary of Labor for Occupational Safety and Health in the preparation of a comprehensive body of standards for the ship building, shipbreaking, and ship repairing industries. The June 27 notice also solicited nominations for membership on the committee.

The fifteen members selected to serve as members of SEAC, together with the interests represented, are as follows:

Name	Representing
Gasper C. D'Anna, Platzer Shipyard	Management
Charles K. Klein, Newport News Shipyard.	Do.
Wayne P. LaGrange, Jeffboat Shipyard.	Do.
Robert Secor, General Dynamics	Do.
Russell Axsom, Steelworkers	Labor
Louis S. D'Ambrosio, Boilermakers	Do.
Bedros Dostoomian, Sheet Metal Workers.	Do.
Frank Terranova, Plumbing & Pipe Fitting.	Do.
Pete Schmidt, State of Washington	State
Bernard C. Stapor, U.S. Navy	Federal
Joseph J. Ocken, U.S. Coast Guard	Do.
Laurence D. Reed, NIOSH	Do.
Thomas H. Vodicka, Maritime Administration.	Do.
Linwood E. Temple, Marine Chemists Association (Chairman).	Professional
James R. Thornton, American Industrial Hygiene Association.	Do.
Alternates:	
Joseph P. Eagan, Bethlehem Steel.	Management
James D. Bishop, Paiters	Labor

Alternatates will serve only if a member representing that interest should resign or be removed from the committee.

The proposed agenda for the first meeting of SESAC is as follows:

I. Call to Order; II. Opening Remarks by OSHA Assistant Secretary John A. Pendergrass; III. Swearing-in Ceremony; IV. Purpose/Role of SESAC; V. Methodology to be Used; VI. Background Information; VII. Work Rules: VIII. Discussion of Standards Package; IX. Planning for Future Meetings.

As noted in 29 CFR Part 1912, the Chairman of the Advisory Committee will have the authority to permit oral presentations for the public with regard to agenda items, as time permits. Persons wishing to make such presentations should submit a written request by close of business, December 6, 1988 (see ADDRESS section, above). The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed.

Signed at Washington, DC, this 14th day of November 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88–26660 Filed 11–17–88; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Materials Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming (202) 357–9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: National Science Foundation Proposal/Award Information.

Affected Public: Individuals, state or local governments, businesses or other for profit, non-profit institutions, and small businesses or organizations.

Responses/Burden Hours: 37,000 responses; 120 burden hours each.

Abstract: The National Science Foundation supports research in all scientific disciplines, science education and research policy. This support is made through grants, contracts, and other agreements awarded to universities, university consortia, nonprofit, and other research organizations. These awards are based on proposals submitted to the Foundation.

Dated: November 14, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88-26758 Filed 11-17-88; 8:45 am]

BILLING CODE 7555-01-M

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: National Science Foundation Proposal Evaluation Process.

Affected Public: Individuals.

Responses/Burden Hours: 145,500 responses; 5 burden hours each.

Abstract: The National Science Foundation's scientists, engineers and other officials evaluate all proposals submitted to the agency. To assist them in the evaluation process, the Foundation obtains the advice of scientists, engineers and others who are specialists in the fields covered in the proposals. Assistance is obtained through mail review and assembled panels.

Dated: November 14, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88-26759 Filed 11-17-88; 8:45 am]

BILLING CODE 7555-01-M

Materials Submitted For OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Expedited Clearance Request: NSF is requesting an expedited clearance from OMB for a two week turn-around after receipt at OMB (See following telephone questionnaire).

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Research Opportunities for Women (telephone survey)

Affected Public: Individuals.

Responses/Burden Hours: 560 respondents; 30 minutes each.

Abstract: This survey will gather views of several groups of women (e.g., ROW awardees, declinees, regular program awardees and declinees, and non-applicants) to assess initial impacts of Research Opportunities for Women program and investigate several questions related to program's importance to the targeted group, its development, and its management.

Dated: November 8, 1988.

Herman G. Fleming,

NSF Clearance Officer.

BILLING CODE 7555-01-M

DRAFT

Edit check _____

Time start: ____:____ Time end: ____:____ Minutes: |____|____|

Sample group assignment: |____| Interviewer: |____|____|____|____|

Major field code: |____|____| Observation #: |____|____|____|____|

Institution code: |____|____|____|____|
d4 d5 d6 d7

ROW AWARDS/DECLINES

Hello. My name is _____ from the Public Policy Resources Lab at Texas A&M University. We are helping the National Science Foundation to evaluate their program known as Research Opportunities for Women. According to the information we have between 1985 & 1987 ... [REFER TO PROPOSAL PROFILE]. Is that correct? [IF INCORRECT, ASCERTAIN CORRECT CLASSIFICATION] I'd like to ask several questions about your experiences with NSF, and how NSF can improve research support for women.

The interview will take about 20 minutes. Is it convenient to talk with you now, or should we schedule a later time?
Your responses will be treated confidentially. Your future contacts with NSF cannot be influenced by your responses. Our records regarding your proposal activity with the foundation are complete only between 1985 and 1987.
So, the first thing I'd like to ask is...

R1. Since October, 1987, how many grant proposals have you submitted to NSF as a principal or co-principal investigator?

|_____| [DON'T KNOW = 8, REFUSE/NA = 9]
[RECORD VERBATIM]
[IF NONE, SKIP TO R3]

R1a. Of those, how many were to the NSF's "ROW" program?

|_____| [DON'T KNOW = 8, REFUSE/NA = 9]
[RECORD VERBATIM]

R2. Could you tell me for each NSF proposal you've submitted since October, 1987 if it is pending, awarded, or declined?

a) |_____| pending [DON'T KNOW = 98, REFUSE/NA = 99]

b) |_____| awarded [DON'T KNOW = 98, REFUSE/NA = 99]

c) |_____| declined [DON'T KNOW = 98, REFUSE/NA = 99]

R3. We are also interested in your proposal activity with the foundation prior to 1985. Between 1980 and 1985, about how many grant proposals did you submit to NSF as a principal or co-principal investigator?

|_____|_____| [DON'T KNOW = 98, REFUSE/NA = 99]
[RECORD VERBATIM]
[IF NONE, SKIP TO R5]

R4. How many of those between 1980 and 1985 were awarded?

|_____|_____| [DON'T KNOW = 98, REFUSE/NA = 99]
[RECORD VERBATIM]

R5. About how many times have you served as a mail or panel reviewer for NSF proposals?

|_____|_____| [DON'T KNOW = 98, REFUSE/NA = 99]
[RECORD VERBATIM]

R6. [MARK WITHOUT ASKING IF R1 = 1]
Was the ROW proposal your first proposal to NSF?

Yes	1	
No	2	[SKIP TO R8]
Don't know	8	[SKIP TO R8]
Refuse/NA	9	[SKIP TO R8]

R7. **What would you say is the main reason that you did not submit a proposal to NSF previously?**

_____ |_____|_____|

_____ |_____|_____|

R8 **At the time you submitted your ROW proposal... [READ LIST]**

	Yes	No	Don't Know	Refuse/ NA
a) **Had you previously been a principal or co-principal investigator on a Federal grant?**	1	2	8	9
b) **At the time you submitted the ROW proposal were you returning to your career after an interruption?**	1	2	8	9

c) [IF YES] **Why was there a career interruption?** [FIELD CODE.]

family	1
teaching	2
took another job	3
husband's job	4
denied tenure	5
other	6

[DESCRIBE] _____ |____|____|

R9. **How did you first hear about the ROW grant program?** [FIELD CODE.]

NSF Program Office	01
Campus research office	02
Dean	03
Department Head	04
Colleagues	05
Conference	06
Ad or notice in publication	07
Other	08

[DESCRIBE] _____ |__|__|

Don't know	98
Refuse/NA	99

R9a. **And about what year was that?**

|_____|_____|

Don't know	98
Refuse/NA	99

R10. Who first suggested that you submit a proposal to ROW? [FIELD CODE RESPONSE]

self	1
colleague	2
NSF disciplinary program officer	3
ROW program manager	4
Other	5 --> _____ [DESCRIBE]
Don't know	8
Refuse/NA	9

R11. Why did you decide to apply through the ROW program instead of directly through the regular NSF programs? [FIELD CODE]

met eligibility criteria for ROW	1
applied to ROW as one of several funding alternatives (eg. applied to both)	2
better chance of success at ROW	3
advised to apply by NSF program officer	4
Other	5
[DESCRIBE] _____ |____|____|	
_____ |____|____|	
Don't know	98
Refuse/NA	99

R12. How important would you say that the existence of the ROW program was in your decision to submit a research proposal when you did? Would you say it was [READ LIST]:

Very important	1
Moderately important	2
Slightly important, or	3
Not important at all in your decision to submit a research proposal at that time	4
Don't know	8
Refuse/NA	9

R13. What were your general impressions of the ROW program before submitting your proposal? [RECORD VERBATIM]

a) _____ |____\|____\|

b) _____ |____\|____\|

Don't know	98
Refuse/NA	99

R14. Would you say that information about how to go about getting a project funded by NSF was [READ LIST]:

very easy to obtain,	1
somewhat easy to obtain,	2
neither easy nor hard to obtain,	3
fairly hard to obtain, or	4
very hard to obtain?	5
Don't know/no contact	8
Refuse/NA	9

R15. How long did it take you to prepare your ROW proposal for NSF?

1 month or less	1	5 months	5
2 months	2	6 or more months	6
3 months	3	Don't know	8
4 months	4	Refuse/NA	9

R16. What did you learn from your experience applying for the ROW research grant during the 1985-87 period? [PROMPT WITH What else? RECORD VERBATIM.]

_____|____|____|

_____|____|____|

_____|____|____|

Don't know 98
Refuse/NA 99

R17. How would you characterize your experience with the ROW program. [PROBE FOR DESCRIPTIVE ADJECTIVES. PROBE: Do you have any further thoughts regarding your experience with ROW? PROBE FOR COMPLETE RESPONSE] [RECORD VERBATIM]

_____|____|____|

_____|____|____|

_____|____|____|

Don't know 98
Refuse/NA 99

R18. How would you characterize your experiences with NSF other than ROW? [PROBE FOR DESCRIPTIVE ADJECTIVES. PROBE FOR COMPLETE RESPONSE. RECORD VERBATIM.]

_____|____|____|

_____|____|____|

Don't know 98
Refuse/NA 99

R19. To what extent would you recommend the ROW program to eligible women? Would you [READ LIST]:

definitely recommend it, 1
mildly recommend it, 2
mildly discourage it, or 3
definitely discourage it? 4

Don't know 8
Refuse/NA 9

R20. Having gone through the ROW proposal process, if you were eligible, how seriously would you consider submitting a proposal to ROW again? [DO NOT READ LIST]

definitely consider 1
might consider 2
definitely would not consider 3

Don't know 8
Refuse/NA 9

R21. Do you think that your colleagues regard an ROW award differently from a regular award?

Yes	1	
No	2	[SKIP TO R22]
Colleagues don't know about ROW	3	[SKIP TO R22]
Don't know	8	[SKIP TO R22]
Refuse/NA	9	[SKIP TO R22]

R21a. In what way? _____|__|__|
[RECORD VERBATIM]
_____|__|__|

[IF 1987 PLANNING GRANT APPLICANT: IF AWARDEE, SKIP TO R23
IF DECLINEE, SKIP TO R25]

[IF 1987 OR LATER ROW APPLICANT: IF AWARDEE, SKIP TO R26,
IF DECLINEE, SKIP TO R27.]

[IF 1985 OR 1986 ROW APPLICANT, ASK]:

R22. In 1987, ROW was expanded to include small grants to support activities associated with planning a research project. How useful would such a small planning grant have been, had it been available at the time you applied for research support? [READ LIST]

Very useful	1
Moderately useful	2
Not very useful	3
Not useful at all	4
Don't know	8
Refuse/NA	9

<----------[IF ROW AWARDEE, SKIP TO R26]----------
[IF ROW DECLINEE, SKIP TO R27]

[IF 1987 PLANNING GRANT AWARDEE, ASK]:

R23. I am going to ask you about some areas in which you may have been affected as a result of having received an ROW Planning Grant. Please indicate for each item whether you feel the impact of the award has been great, moderate, none at all, or too soon to tell.

		Great	Moderate	None	Soon	D/K	RF/NA
a.	In terms of helping you find collaborators for future research, would you say the impact of the award was... [READ OPTIONS.]?	1	2	3	4	8	9
b.	How about for helping you establish the precise direction of your future research?	1	2	3	4	8	9
c.	For helping you discover the major weaknesses in your research idea?	1	2	3	4	8	9
d.	For helping you discover that you needed to spend more time developing your idea?	1	2	3	4	8	9
e.	In terms of providing a good proposal writing experience, would you say the impact of the award was... [READ OPTIONS.]	1	2	3	4	8	9
f.	How about for encouraging you to seek further research funding?	1	2	3	4	8	9
g.	For helping you get tenure or promotion?	1	2	3	4	8	9
h.	For helping you get a salary increase?	1	2	3	4	8	9
i.	Are there any other ways in which you have been affected as a result of the planning grant?	1	2	3	4	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM]_____|_____|_____|

_____|_____|_____|

R24. As a result of the planning grant

a.	Are you currently preparing or did you submit a research proposal to ROW?	1	2	8	9
b.	Are you currently preparing or did you submit a research proposal through regular NSF program?	1	2	8	9
c.	Are you currently preparing or did you submit a proposal for another funding source?	1	2	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM]_____|____|____|

_____|____|____|

<----------[SKIP TO R30]----------

[IF 1987 PLANNING GRANT DECLINEE, ASK]:

R25. I am going to ask you about some areas in which you may have been affected as a result of not having received an ROW Planning Grant. Please indicate for each item whether you feel the impact of the award decision has been great, moderate, none at all, or too soon to tell.

		Great	Moderate	None	Soon	D/K	RF/NA
a.	In terms of helping you find collaborators for future research, would you say the impact of the experience was... [READ OPTIONS.]?	1	2	3	4	8	9
b.	How about for helping you refine the direction of your future research?	1	2	3	4	8	9
c.	For helping you discover the major weaknesses in your research idea?	1	2	3	4	8	9
d.	For helping you discover that you needed to spend more time developing your idea?	1	2	3	4	8	9
e.	How much impact did the decline have in terms of discouraging you from seeking further research funding?	1	2	3	4	8	9
f.	How much impact did it have on your ability to get tenure or promotion?	1	2	3	4	8	9
g.	How much impact did it have on your chance of receiving a salary increase?	1	2	3	4	8	9
h.	Are there any other ways in which you have been affected as a result of not having received the planning grant?	1	2	3	4	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM] _____ |____|____|

<----------[SKIP TO R30]----------

[IF ROW AWARDEE, ASK]:

R26. I am going to ask you about some areas in which you may have been affected as result of having received an ROW award. Please indicate for each item whether you feel the impact of ROW has been great, moderate, none at all, or too soon to tell.

		Great	Moderate	None	Soon	D/K	RF/NA
a)	In terms of enhancing your understanding of how to locate research funding, would you say the impact of the award was... [READ OPTIONS]	1	2	3	4	8	9
b)	How about for enhancing your understanding of the NSF proposal process?	1	2	3	4	8	9
c)	For increasing your ability to spend time doing research?	1	2	3	4	8	9
d)	In terms of increasing the respect of you colleagues would you say the impact of the ROW award was [READ OPTIONS]	1	2	3	4	8	9
e)	How about for improving your reputation in your field?	1	2	3	4	8	9
f)	For increasing your access to laboratory equipment or instrumentation?	1	2	3	4	8	9
g)	For increasing your available support for students?	1	2	3	4	8	9
h)	For enhancing your publication record?	1	2	3	4	8	9
i)	In terms of providing a good proposal writing experience, would you say the impact of the award was... [READ OPTIONS]	1	2	3	4	8	9
j)	How about for encouraging you to seek further research funding?	1	2	3	4	8	9
k)	For helping you get tenure or promotion?	1	2	3	4	8	9
l)	For helping you get a salary increase?	1	2	3	4	8	9
m)	Are there any other ways in which you have been affected as a result of having received the ROW award?	1	2	3	4	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM.] _____ |_____|_____|

_____ |_____|_____|

<----------[SKIP TO R30]---------->

[IF ROW DECLINEE, ASK]:

R27. Why do you think that your proposal was not funded?

_____ |_____|_____|

[RECORD VERBATIM]

Don't know 98
Refuse/NA 99

R28. What did you do after your proposal was declined? [READ LIST]

		Yes	No	Don't Know	Refuse/ NA
a)	Did you contact NSF to question or try to understand their decision?	1	2	8	9
b)	Did you revise and resubmit your proposal to the ROW program?	1	2	8	9
c)	Did you look for funding elsewhere?	1	2	8	9
d)	Did you continue working on the idea without funding?	1	2	8	9
e)	Did you respond in any other ways?	1	2	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM] _____ |_____|_____|

_____ |_____|_____|

R29. I am going to ask you about some areas in which you may have been affected as result of not having received the ROW award. Please indicate for each item whether you feel the impact of the award decision has been great, moderate, none at all, or too soon to tell.

		Great	Moderate	None	Soon	D/K	RF/NA
a)	In terms of enhancing your understanding of how to locate research funding, would you say the impact of the experience was... [READ OPTIONS]	1	2	3	4	8	9
b)	How about for enhancing your understanding of the NSF proposal process?	1	2	3	4	8	9
c)	How much impact did the decline have on your ability to get tenure or promotion?	1	2	3	4	8	9
d)	How much impact did it have on your chance of receiving a salary increase?	1	2	3	4	8	9
e)	How much impact did it have on the level of respect your colleagues have for your work?	1	2	3	4	8	9
f)	In terms of providing a good proposal writing experience, would you say the impact of applying for the award was... [READ OPTIONS]	1	2	3	4	8	9
g)	How much impact did the decline have in terms of discouraging you from seeking further research funding?	1	2	3	4	8	9
h)	Are there any other ways in which you have been affected as a result of not having received the ROW award?	1	2	3	4	8	9

[PROMPT: Please describe them to me. RECORD VERBATIM.] _____ |_____|_____|

_____ |_____|_____|

[ASK OF ALL RESPONDENTS]

R30. When applying for research grants from NSF in your field, do you feel women have a great advantage, some advantage, are on equal par compared to men, some disadvantage, or a great disadvantage?

great advantage	1	
some advantage	2	
on equal par	3	
some disadvantage	4	
great disadvantage	5	
Don't know	8	[SKIP TO R32]
Refuse/NA	9	[SKIP TO R32]

R31. Why do you feel this way?

_____ |_____|_____|

_____ |_____|_____|

Don't know	98
Refuse/NA	99

R32. **Now let's turn to some questions about improving research opportunities. How do you think NSF can improve its support of female scientists and engineers?** [FIELD CODE]

more information on research opportunities	1
more planning grant or seed money options	2
training for NSF program officers regarding opportunities for women	3
more female proposal reviewers	4
sponsoring training for graduate students on how to obtain research support	5
provide more money/support	6
Other	7

[DESCRIBE]:_____|_____|_____|

_____|_____|_____|

R33. **Thinking of your own research opportunities, are you spending as much time conducting research as you would like?**

Yes	1
No	2
Don't know	8
Refuse/NA	9

R34. **I'm going to read a list of things that might make it difficult to spend time doing research. Please tell me for each item whether or not it is a problem for you.** [READ LIST.]

		Yes	No	Don't Know	Refuse/ NA	N12-Most important barriers for women.
a)	**Does availability of research funding limit your ability to do research?**	1	2	8	9	a. 1
b)	**How about an excessive teaching load?**	1	2	8	9	b. 1
c)	**Inadequate clerical support?**	1	2	8	9	c. 1
d)	**Insufficient support from TA's & graders?**	1	2	8	9	d. 1
e)	**Does an excessive advising load limit your ability to do research?**	1	2	8	9	e. 1
f)	**How about committee assignments?**	1	2	8	9	f. 1
g)	**Other administrative duties?**	1	2	8	9	g. 1
h)	**Do public service obligations limit your ability to do research?**	1	2	8	9	h. 1
i)	**Family responsibilities?**	1	2	8	9	i. 1
j)	**Is there anything else that limits your ability to do research?**	1	2			j. 1

[DESCRIBE]:_____|_____'_____|

R35. [IF NO "YES" ANSWERS ABOVE, SKIP TO R36. OTHERWISE, ASK:]
Of all the barriers you just indicated were problems, which, if any, would you say are more of a problem for women than for men? Would you like me to read your responses again? [IF YES, READ ALL "YES" AND "OTHER" RESPONSES AGAIN, PAUSING AFTER EACH FOR RESPONDENT'S REPLY.]

[CIRCLE NUMBER ABOVE FOR BARRIERS NAMED]

R36. I am going to read a list of the kinds of help some researchers receive in preparing proposal(s), I would like you to tell me which ones, if any, you receive in writing a proposal. [READ LIST]

Would you receive...	Yes	No	Don't Know	Refuse/ NA	RD42 -ASSISTANCE
a) clerical support in preparing a proposal?	1	2	8	9	a. 1
b) budget preparation assistance?	1	2	8	9	b. 1
c) a review of proposal content by a colleague?	1	2	8	9	c. 1
d) a review of proposal content by a sponsored research office official?	1	2	8	9	d. 1
In preparing a proposal, would you receive...					
e) format or presentation guidance from a colleague?	1	2	8	9	e. 1
f) format or presentation guidance from a sponsored research office official?	1	2	8	9	f. 1
g) seed money to collect preliminary data?	1	2	8	9	g. 1
In preparing a proposal, have you used assistance from...					
h) a discussion with the NSF program manager?	1	2	8	9	h. 1
i) comments from reviewers on an unsuccessful proposal?	1	2	8	9	i. 1
j) a successful NSF proposal to help format your proposal?	1	2	8	9	j. 1
k) the NSF grant proposal preparation guide?	1	2	8	9	k. 1
l) Is there any other form of assistance you have found helpful when preparing proposals?	1	2	8	9	l. 1

[DESCRIBE]: _____|_____|_____|

_____|_____|_____|

R37. Of the kinds of assistance you just listed, what are the TWO most important forms of assistance in preparing proposals? Would you like me to read your responses again? [IF YES, READ ALL "YES" AND "OTHER" RESPONSES AGAIN]

[CIRCLE NUMBER ABOVE FOR TYPES OF ASSISTANCE USED.]

I'd like to ask a few questions now about your history of research support.

R38. Other than NSF, what are the major sources of funding for your research interests.

[RECORD VERBATIM AND WRITE IN CLASSIFICATION CODE FROM LIST BELOW.]

		CLASS. CODE			CLASS. CODE
a)	_____	_____	b)	_____	_____
c)	_____	_____	d)	_____	_____
e)	_____	_____	f)	_____	_____

Classification Codes:

Federal agencies	
NASA	1
DOE	2
NIH	3
ONR	4
OTHER FED AGENCIES	5
State	6
Private foundation	7
Industry	8
Other	9

R39. About how many grant proposals have you submitted to non-NSF funding sources as a principal or co-principal investigator since 1980? Do not include small grants you may have received from your university or department.

|_____|_____| [DON'T KNOW = 98, REFUSE/NA = 99]
[RECORD VERBATIM]

R40. How many awards in which you were principal investigator or co-principal investigator have you received from non-NSF sponsors since 1980? Again, do not include small grants you may have received from your university or department.

|_____|_____| [DON'T KNOW = 98, REFUSE/NA = 99]
[RECORD VERBATIM]

R41. How much difficulty do you have understanding differences between the types of research NSF supports and research supported by other federal agencies in your field? [READ LIST]

great difficulty	1
moderate difficulty	2
slight difficulty, or	3
no difficulty?	4
Don't know	8
Refuse/NA	9

R42. Have you had a mentor -- that is, a person who has taken a particular interest in your career and has been willing to provide guidance and/or support for you?

Yes	1	
No	2	[SKIP TO R45]
Don't know	8	[SKIP TO R45]
Refuse/NA	9	[SKIP TO R45]

R43. [IF YES] How did your mentor influence your decision to pursue academic research?

_____ |_____|_____|

_____ |_____|_____|

Don't know 98
Refuse/NA 99

R44. [RECORD SEX OF MENTOR. IF SEX HAS NOT BEEN MENTIONED, ASK]: Is your mentor male or female?

Male 1
Female 2

Don't know 8
Refuse/NA 9

R45. For how many female students and other female faculty members have you served as a mentor, if any?

|_____|_____| [DON'T KNOW = 98, REFUSE/NA = 99]----> [SKIP TO R46]
[IF NONE, SKIP TO R46]

R45a. From your perspective as a mentor, what issues affecting women do you have to address? [RECORD VERBATIM]

a) _____ |_____|_____|

b) _____ |_____|_____|

c) _____ |_____|_____|

Now I have a few final questions about your background and your current career status.

R46. Are you currently employed in a medical school?

Yes 1
No 2

Don't know 8
Refuse/NA 9

R47. What is your highest academic degree?

BA/BS 1
MA/MS 2
PhD 3
MD 4
EdD 5
Other 6
[DESCRIBE] _____|____|____|

Don't know 8
Refuse/NA 9

R47a. What institution did you receive it from?

_____|_____|_____|_____|_____|

Don't know 9998
Refuse/NA 9999

R47b. **What year did you receive it?**

|_____|_____| year

Don't know 8
Refuse/NA 9

R47c. **What field was it in?**

Field: _____|____|____|

Don't know 98
Refuse/NA 99

R48. [RECORD ANSWER. DO NOT ASK IF OBVIOUS.] **What is your major field of research now?**

_____|_____|_____|_____|_____|

[RECORD VERBATIM]

Don't know 98
Refuse/NA 99

R49. [RECORD ANSWER. DO NOT ASK IF KNOWN.] **Would you describe your current position as primarily teaching or research oriented?**

teaching 1
research 2

Don't know 8
Refuse/NA 9

R50. [RECORD ANSWER. DO NOT ASK IF KNOWN.] **Is it a tenure track position?**

Yes 1
No 2 [SKIP TO R52]

Don't know 8
Refuse/NA 9

R51. **Do you have tenure?**

Yes 1
No 2

Don't know 8
Refuse/NA 9

R52. **That concludes this interview. Do you have any additional comments which you feel are appropriate for this study?**

_____

_____

_____

R53. **Would you like to receive a copy of the final report from this study of the ROW program?**

Yes 1 --> [CONFIRM ADDRESS. IF INCORRECT, RECORD CORRECT ADDRESS ON BACK PAGE.]
No 2

On behalf of the National Science Foundation, I would like to thank you for participating in this study. Your responses will be of great interest to the Foundation.

ADDRESS: _____

_____

_____

[FR Doc. 88-26772 Filed 11-17-88; 8:45 am]
BILLING CODE 7555-01-C

Advisory Committee for Computer and Computation Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Computation Research.

Date and time: December 8, 1988, 9:00 a.m. to 5:00 p.m.; December 9, 1988, 8:30 a.m. to 3:00 p.m.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: All Open—December 8, *Open*—9:00 a.m. to 5:00 p.m.; December 9, *Open*—8:30 a.m. to 3:00 p.m.

Contact Person: Peter Freeman, Division Director, Division of Computer and Computation Research, Room 304, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. *Telephone:* (202) 357–9747 email: pfreemannote.nsf.gov Anyone planning to attend this meeting should notify Dr. Freeman no later than December 5, 1988.

Summary Minutes: May be obtain from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning support of Computer Research.

November 14, 1988.

M. Rebecca Winkler,

Committee Management Officer.

Advisory Committee for Computer and Computation Research—Agenda

Thursday, December 8, 1988, Room 543—9:00 a.m. to 5:00 p.m.—Open

9:00—Introductions; CISE Status.
9:30—CCR Status.
10:30—Software Research Panel.
12:30—Lunch.
1:45—Software Research Panel.
4:00—Issues in computer science.

Friday, December 9, 1988, Room 543—8:30 a.m. to 3:00 p.m.—Open

8:30—Software research agenda.
9:30—CCR and OCDA reports.
10:30—Report on Symbolic Computation Workshop.
12:30—Lunch.
1:30—Future Planning Issues.
3:00—Adjourn.

[FR Doc. 88–26653 Filed 11–17–88; 8:45 am]

BILLING CODE 7555-01-M

Task Force on Women, Minorities, and the handicapped in Science and Technology; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Task Force on December 13, 1988.

Meeting

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date: December 13, 1988.

Time: 9:00 a.m. to 1:00 p.m.

Place: Federal Emergency Management Agency, C Street, SW., Room 401, Washington, DC 20472.

Type of Meeting: Open.

Purpose: Receive reports from Task Force members on progress toward implementing recommendations of the Task Force.

October 20, 1988.

Sue Kemnitzer,

Executive Director (202) 245–7477.

[FR Doc. 88–26654 Filed 11–17–88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–281]

Virginia Electric and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Virginia Electric and Power Company (the licensee) for the Surry Power Station, Unit No. 2, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would grant a one-time relief from the schedular requirements of 10 CFR Part 50, Appendix J, paragraph III.A.6(b) to perform a Type A test every outage until two consecutive tests meet the acceptance criteria. The requested exemption would allow the licensee to resume their normal retest schedule in accordance with paragraph III.D. of Appendix J.

The licensee's request for exemption and bases therefore are contained in a letter dated August 12, 1988, as supplemented on August 15 and 31, 1988. The licensee had previously submitted information on this subject by letter dated February 29, 1988.

The Need for the Proposed Action

The proposed exemption would allow a one-time relief from performing a Type A test for the current refueling outage and enable Surry Unit 2 to resume the normal retest schedule specified in section III.D. of 10 CFR Part 50, Appendix J, and therefore prevent unnecessary pressurization of the containment to design pressure basis.

The purpose of the Type A testing is to measure and ensure that the leakage through the primary reactor containment does not exceed the maximum allowable leakage rate. It also provides assurance that periodic surveillance, maintenance and repairs are made to systems or components penetrating the containment. The last three Type A tests that the licensee performed have demonstrated that containment integrity has not significantly degraded over the operating cycle. In addition, the licensee has replaced containment sump isolation valves which were major contributors to containment leakage problems, and resolved the staff's concern about leakage from water-filled containment penetrations which are expected to operate during post-accident conditions. Therefore, the licensee has requested a one-time exemption from the schedular requirements of paragraph III.A.6(b) of Appendix J to 10 CFR Part 50.

Environmental Impacts of the Proposed Action

The proposed exemption would allow a one-time relief from the schedular requirements to perform a Type A test every outage until two consecutive tests meet the acceptance criteria. The licensee's last three Type A tests have demonstrated that there has been no significant degradation of containment integrity over the operating cycle. The proposed exemption will not negatively impact containment integrity and will not significantly change the risk from facility accidents. Therefore, post-accident radiological releases will not be significantly greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the proposed exemption would not affect nonradiological plant effluents and would have no other environmental impacts. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts

associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there are no measurable impacts associated with the proposed exemption, any alternative to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of the Surry Unit 2 operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Surry Power Station, Unit 2.

Agencies and Persons Consulted

The NRC staff has 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 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 exemption from 10 CFR Part 50, Appendix J, dated August 12, 1988, as supplemented on August 15 and 31, 1988, and previous information submitted by letter dated February 29, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 10th day of November, 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26732 Filed 11-17-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498]

Houston Lighting & Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 2 to Facility Operating License No. NPF-76, issued to the Houston Lighting & Power Company, (the licensee), which revised the Technical Specifications for operation of the South Texas Project, Unit 1, located in Matagorda County, Texas. The amendment was effective as of the date of its issuance.

The amendment allows the expansion of the spent fuel pool storage capacity form the current 196 fuel assemblies to 1969 fuel assemblies. The expansion is to be achieved by removing the existing racks and installing new, high density ones.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

The Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on June 23, 1988 (53 FR 230707) and amended on September 14, 1988 (53 FR 35570). No request for a hearing or petition for leave to intervene was filed following the notices.

The Commission has prepared an Environmental Assessment related to the action and has concluded that an evnironmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement related to the Operation of South Texas Project, Units 1 and 2 dated August 1986.

For further details with respect to the action, see: (1) The application for amendment dated March 8, 1988, as supplemented by letter dated March 26, 1988; (2) additional information supplied in the licensee's letters of August 9, 10, 19, 30, and September 21, 22, and 29, 1988; (3) Amendment No. 2 to License No. NFP-76; and (4) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555; at Wharton Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488; and the Austin Public Library, 810 Gaudalupe Street, Austin, Texas 78701. A copy of items (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 1st day of November, 1988.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26733 Filed 11-17-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-382A; 50-313A; 50-368A]

Waterford Steam Electric Station, Unit 3; Arkansas Nuclear One, Units 1 and 2; Proposed License Amendments

By separate applications dated July 1, 1988, Louisiana Power and Light Company and Arkansas Power and Light Company (LP&L, AP&L or licensees) requested that Operating License No. NPF-38 for the Waterford Steam Electric Station, Unit 3 (Waterford) and Operating License Nos. DPR-51 and NPF-6 for Arkansas Nuclear One, Units 1 and 2 (ANO 1 and 2) be amended to reflect the addition of system Energy Resources, Inc. (SERI) as a licensee on each of the aforementioned operating licenses.

Each license amendment application is associated with the consolidation of nuclear operations of LP&L, AP&L and SERI—all wholly-owned subsidiaries of Middle South Utilities, Inc. (MSU). For reasons discussed in the applications, MSU has decided that SERI will become its system-wide nuclear operating company. Under the MSU Plan, SERI will assume all responsibilities for the management and operation—but not ownership—of Waterford and ANO 1 and 2. SERI presently owns and operates Grand Gulf 1 and is in charge of the construction of Unit 2, the remaining nuclear units owned by the MSU system.

The proposed changes would transfer the responsibility for operating and managing Waterford and ANO 1 and 2 from LP&L and AP&L respectively to SERI. However, the amendments indicated that the ownership of Waterford and ANO 1 and 2 and the manner in which power and energy will be distributed and marketed from Waterford and ANO 1 and 2 will not change. Therefore, SERI and the licensees have contended that the antitrust license conditions which are attached to the Waterford operating license and pertain to LP&L will remain unchanged.

Pursuant to 10 CFR 50.90 of the Commission's Rules and Regulations and Section 105c of the Atomic Energy Act, as amended, the staff is publishing receipt of the proposed amendments and requesting comments on their competitive impact. Copies of the applications for amendment have been forwarded to the Attorney General for his review and comment. Moreover, copies of the applications for amendment will be available for public inspection at the Commission's Public Document Room located at 2120 L Street, NW., Washington, DC 20555 and in each of the following local pulic document rooms: (1) for Waterford: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122; (2) for ANO 1 and 2: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801; and (3) for SERI: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Any person who wishes to express views pursuant to antitrust issues that may be raised by these amendment requests, should submit said views within 15 days from the initial publication of this notice in the **Federal Register** to the U.S. Nuclear Regulatory Commission, Washington, DC 20555; Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 14th day of November, 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Acting Associate Director for Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-26734 Filed 11-17-88; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Proposed Amendments, Hearings, and Public Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council, Council).

ACTION: Notice of proposed amendments, hearings, and opportunity to comment.

SUMMARY: Pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*) the Council, in April 1983, adopted a Northwest Conservation and Electric Power Plan (Plan) including model conservation standards (MCS). The most recent complete amendment of the Plan was adopted in 1986. Although the Act requires the Council to review the Plan at least every five years, the Council has taken up various discrete parts of the Plan more frequently, to respond to ongoing changes in the regional energy picture and to incorporate the most recent technology and analysis. The Council now proposes to amend the Plan by updating the technical data base on which portions of the Plan depend. This notice describes the subject matter of the proposed amendments and explains how to participate in the amendment process.

DATES AND ADDRESSES: The public comment period regarding the proposed amendments will close at 5 p.m. Pacific time on Friday, January 13, 1989. Public hearings on the proposed amendments will be held in each of the four Northwest states. Notice of the dates, times and places of these hearings will be published at the earliest opportunity.

The Council expects to take final action on the proposed Supplement amendments at its February 1989 meeting in Olympia, Washington.

Guidelines for Presenting Oral Comments at Hearings.

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordination, at the Council's central office no later than the day before the hearing. The Council's address is: 851 SW. 6th Avenue Suite, 1100, Portland, Oregon 97204. The Council's telephone numbers are: (503) 222-5161 and (toll free) (800) 222-3355 in Idaho, Montana, and Washington or (800) 452-2324 in Oregon.

2. Those who do not reserve time periods will be permitted to present oral comments as time permits.

3. Each speaker will be allowed 15 minutes during the hearing.

Guidelines for Submitting Written Comments

1. All written comments must be received in the Council's central office, at 851 SW. 6th Avenue, Suite 1100, Portland, Oregon 97204, by 5 p.m. Pacific time on January 13, 1989.

2. Please provide three (3) copies of all written submissions.

SUPPLEMENTARY INFORMATION: As directed by the Northwest Power Act (16 U.S.C. 839 *et seq.*, the Act) the Council developed and adopted a regional conservation and electric power plan shortly after its formation. The Plan includes an energy conservation program, including, but not limited to, model conservation standards; a recommendation for research and development; a methodology for determining quantifiable environmental costs and benefits; a twenty year demand forecast; a forecast of power resources that the Bonneville Power Administration will need to meet its obligations; an analysis of reserve and reserve reliability requirements; and a surcharge methodology. The Plan also includes the Fish and Wildlife Program, developed pursuant to other procedural requirements under the Act.

In order to keep the Plan as up to date as possible, the Council entered a public involvement process in January 1988 by publishing a staff issue paper entitled "Plans for a Technical Update to the 1986 Power Plan." The Council followed this paper with several issue papers on key planning areas, including economic, demographic and fuel price assumptions; demand forecasts; and analyses of the cost and availability of conservation and generating resources. After considerable public comment, the Council published a Staff Draft Update, which covered all the subjects treated in the issue papers. The Draft Update also generated extensive public comment. Most commentators said that while certain technical features of the Plan ought to be updated in the near term, the Draft Update as a whole proposed more fundamental changes in the Plan, some of which touched on basic policy issues, than could be addressed in the relatively short time proposed for the Update process. In particular, several commentators believed that several resources in the draft resource portfolio needed more deliberate consideration. These include cogeneration, and its cost and performance data, transmission and distribution system efficiency improvements, voltage regulation, as well as strategies to back up nonfirm power. Many commenters suggested that the Council identify the more basic policy issues now, but take them up on a more extended schedule.

Following these comments, the Council revised the Draft Update. In this revision, which is now called the Draft Supplement, the Council has reduced the amount of the more controversial resource portfolio estimates to the values found in the 1986 Power Plan.

Proposed Amendments

The amendments proposed in the Supplement would highlight the Council's power planning process, including, in particular, its philosophy of and strategies for implementing least cost planning. The Supplement also identifies certain major policy issues

proposed for future, more detailed consideration.

The Supplement is chiefly aimed at bringing up to date the demand forecasts contained in the Plan, the estimates of resources available to meet future demand, both conservation and generating resources, and, within the limits noted above, an updated resource portfolio. The Supplement also contains several appendices, which document the revised forecasts of economic, demographic and fuel price assumptions; revised demand forecasts; revised estimates of the cost and availability of conservation resources; revised estimates of the cost and availability of new generation (hydroelectric, cogeneration, straegies to improve the use of the existing hydro system by using combustion turbines, and coal, along with a listing of the cost components considered) in the Northwest; and a description of the region's hydroelectric power system.

The Supplement, if adopted, would amend the Council's Power Plan, affecting portions of Chapters 1–8 of the 1986 Plan. It would not modify or otherwise affect Chapter 9 (the Action Plan). In case of conflict between the Supplement and the 1986 Power Plan, the Supplement would supersede the Plan. In all other instances, the Supplement would be an addition to the 1986 Power Plan.

FOR FURTHER INFORMATION CONTACT: If you would like a copy of the Draft Supplement to the 1986 Power Plan and/or a copy of the Draft Supplement Appendices, please contact Judy Allender, in the Council's office of Public Information and involvement, at the address or telephone numbers listed above.

Edward Sheets,

Executive Director.

[FR Doc. 88–26715 Filed 11–17–88; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26271; File No. SR–CBOE–88–17]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On September 20, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] proposed rule changes to implement procedures that will be applicable to participants in the CBOE's joint venture with the Chicago Board of Trade ("CBOT").

The proposed rule changes were noticed in Securities Exchange Act Release No. 26155 (October 5, 1988), 53 FR 39699 (October 11, 1988).[3] One comment was received on the proposed rule changes.[4]

I. The Joint Venture [5]

On February 12, 1988, the CBOE and the CBOT entered into a joint venture ("JV") agreement which provides for trading on the CBOE floor by the CBOE or CBOT of certain securities and futures contracts, and special procedures for trading those products. The CBOE 50 and 250 stock index futures contracts ("CBOE 50" and "CBOE 250", respectively) [6] are the initial JV contracts that will be traded on the CBOE floor. This will be the first time that a stock index futures pit will be located other than on a board of trade.[7]

The CBOE has constructed a new futures trading facility on its current trading floor, adjacent to the current Standard and Poor's 100 Stock Index option ("OEX") trading pit. The futures trading facility will include a futures pit for trading the CBOE 250, 76 booths and 20 arbitrage posts, and an elevated catwalk for communicating orders between the CBOE 250 pit and the OEX and the Standard and Poor's 500 Stock Index option ("SPX"/"NSX"/"SPL") pits.[8] A new post for trading the SPX will be located in the corner of the new trading facility.

A joint venture participant ("JVP") [9] may be either a member or a non-member of the Exchange. Under the terms of the JV agreement, all CBOE regular members will have access to all JV products. CBOE regular members will have access to JV securities products through their CBOE membership. In order to trade JV futures and futures option contracts in person, however, CBOE regular members must become futures qualified by completing a CBOT orientation seminar and examination program and filing a JV application. In addition, if the regular member intends to act as a floor broker in JV futures or futures option contracts, the member also must be registered with the National Futures Association.

Certain persons not members of the CBOE also will have access to JV contracts. CBOT full members, CBOT associate members ("AMs"), and CBOT Index, Debt and Energy Market members ("IDEMs") will have full access to all JV futures products. In order to trade JV futures contracts in person on the CBOE trading floor, such non-members must file a JV application and agree to be bound by CBOE rules restricting access to trading crowds as

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] The release contained the full text of the proposed rule changes and included the modifications to the proposal submitted by the CBOE in Amendment No. 1, which was submitted on September 29, 1988. Amendment No. 2 was filed on October 11, 1988 and clarified that CBOE floor brokers may accept orders entered by Joint Venture Participants who are not CBOE members only in certain circumstances (*i.e.* if the orders for releated option contracts are for hedge purposes only).

[4] Letter from William Brodsky, President, Chicago Mercantile Exchange ("CME"), to Jonathan Katz, Secretary, SEC, dated October 31, 1988.

[5] The sources for the description of the joint venture are: The CBOE's proposed rule changes, File No. SR–CBOE–88–17, submitted to the Commission on September 20, 1988; Amendments No. 1 and 2 to the proposed rule changes filed on September 29, and October 11, 1988, respectively; the joint venture agreement entered into by the CBOE and the CBOT on February 12, 1988; the regulatory agreement entered into by the CBOE and the CBOT on December 18, 1987, as amended on September 28, and October 5, 1988; CBOE's Joint Venture News, dated August 5, and August 16, 1988; CBOE Information Circular 88A #13 (June 1988); letter from Arne R. Rode, General Counsel, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation ("Division"), dated September 22, 1987; and letter from Mary L. Bender, Vice President, Division of Regulatory Services, CBOE, to Brandon Becker, Associate Director, Division, dated June 3, 1988.

[6] Pursuant to the authority granted by the jurisdictional accord between the Commission and the Commodity Futures Trading Commission ("CFTC"), the Commission reviewed the CBOT's application for designation as a contract market to trade futures contracts based on the CBOE 50 and 250 indexes. The Commission stated that it did not object to the designation. Letter from Jonathan G. Katz, Secretary, Commission, to Dr. Paula Tosini, Director, Division of Economic Analysis, CFTC, dated April 21, 1988. The CFTC approved the CBOT's application for designation as a contract market for the CBOE 50 and CBOE 250 futures on May 11, 1988.

[7] The Philadelphia Board of Trade currently trades foreign currency futures contracts on the Philadelphia Stock Exchange's ("Phlx") foreign currency option floor. Consequently, the CBOE-CBOT joint venture is not the first occasion in which a futures contract will be traded on the floor of a national securities exchange. *See* Securities Exchange Act Release No. 24235 (March 19, 1987) 52 FR 9750 (March 26, 1987).

[8] At the present time only the CBOE 250 stock index futures contract will trade in this pit. We understand that no decision has been made concerning when and where on the CBOE floor the CBOE 50 will trade.

[9] The term "joint venture participant" is defined in CBOE's rules as "a member or non-member of the Exchange who is qualified to execute in person transactions in joint venture contracts in a trading crowd on the floor of the Exchange." Rule 1.1(kk).

well as rules regarding floor decorum and security.[10] CBOT full members will have full access to all JV securities products provided they acquire regular CBOE membership through exercise of their privileges under Article V of the CBOE Certificate of Incorporation.[11] CBOT full members who choose not to become CBOE regular members ("non-exercising CBOT full members") and CBOT partial members (*e.g.*, AMs and IDEMs) who are not eligible to become CBOT members will not be able to enter CBOE trading crowds or to effect in-person transactions in CBOE options products.

While CBOE non-members will be denied physical access to securities products traded on the CBOE floor, non-member JVPs trading JV futures products on the CBOE floor will have non-written order communication ("flashing") privileges to all JV securities products and non-JV securities products that are directly related [12] to those JV futures products. This flashing privilege will permit non-member JVPs to relay orders to floor brokers in the OEX and SPX trading crowds to effect transactions to hedge positions that already have been established in JV futures contracts. Before a CBOE member can conduct customer business with a non-member JVP, however, that member must receive written approval from the CBOE's Division of Regulatory Services. Because of the requirement that member organizations must receive written approval from the Exchange in order to conduct business with non-member JVPs, and because the CBOE will add an account origin code "j" for recording on trade tickets and reporting non-member JVP transactions in Exchange options contracts to the Exchange, the CBOE believes that the Exchange will be able to monitor closely the trading activity between non-member JVPs and member organizations.

As described above, the new futures trading facility on the CBOE floor contains a catwalk between the index options pits and the index futures pits for facilitating the relay by hand signals of intermarket hedging orders. CBOE floor brokers may accept orders flashed by non-member JVPs trading futures contracts on the Exchange floor for JV-related option contracts (*i.e.*, OEX and SPX) only where the orders are for hedging purposes.[13] These flashed orders may be executed by any floor broker, but must be followed by written orders.[14] CBOE regular members in the OEX and SPX crowds will have reciprocal order communication privileges into the JV futures contracts pits.

Non-member JVPs will be treated differently from other CBOE non-members. For example, unlike orders from public customers, option orders from or on behalf of CBOE 250 or CBOE 50 floor traders who are not CBOE members will not be entitled to acceptance by a Board Broker or an Order Book Official.[15] Further, because orders eligible for CBOE's Retail Automatic Execution System ("RAES") are limited to those qualified for entry into the limit order book pursuant to CBOE Rule 7.4(a), non-member JVPs will be prohibited from placing orders for their own account on RAES. Also, member organizations conducting business in JV securities contracts or JV-related options contracts with non-member JVPs will be exempted from several of the sales practice requirements relating to doing business with the public set forth in Chapter IX of CBOE's rules.[16] Chapter IX contains certain rules that member organizations must comply with that are intended to ensure that the purchase or sale of option contracts is suitable for the customers who wish to enter into such transactions. The exemptions from Chapter IX's rules recognize the distinction between non-member professional traders, such as JVPs, and other non-members. Because of the sophistication of the non-member JV professional traders, the CBOE believes that it is not necessary to require safeguards such as those provided in Chapter IX.

The CBOE proposes to allow floor brokers to cross inter-regulatory spread orders.[17] An inter-regulatory spread order has been defined in CBOE's rules as:

> An order involving the simultaneous purchase and/or sale of at least one unit in contracts, each of which is subject to different regulatory jurisdictions, at stated limits, or at a stated differential, or at market prices, on the floor of the Exchange.[18]

An inter-regulatory spread order could consist of a CBOE 250/OEX spread or a CBOE 250/SPX spread.[19] The OEX or SPX part of the spread would be subject to the regulatory jurisdiction of the Commission, while the CFTC would have jurisdiction of the CBOE 250 portion of the spread. Only CBOE members who also are futures qualified will be permitted to effect inter-regulatory spreads. Thus, it will be possible for a futures qualified CBOE floor broker to execute a CBOE 250/OEX(SPX) spread transaction as a single price order not subject to being broken up.[20] Such an inter-regulatory spread transaction may be executed only in either the OEX or SPX option pit as appropriate.[21] The CBOE believes that allowing these orders to be crossed narrows the bid-ask differential, thereby making the markets more efficient.[22] Both the futures and the options leg of the inter-regulatory spread may be effected simultaneously.[23]

On December 18, 1987, the CBOE and the CBOT entered into a regulatory agreement to facilitate the intermarket surveillance of stock index trading. The regulatory agreement provides that the CBOE and the CBOT will promptly exchange information regarding positions and trading activity of

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[10] Rule 1.1(kk); Rule 6.20, Interpretations and Policies .07. Non-member JVPs who are adversely affected by a determination made under Rule 6.20 may obtain review thereof in accordance with the provisions of Chapter XIX of the CBOE Rules (Hearings and Review).

[11] The CBOT full members would, among other things, have to register as broker-dealers and fulfill the requisite qualifications for CBOE membership.

[12] The CBOE will determine the contracts that are related to the JV contracts. For example, for the CBOE 50 and 250, the CBOE has determined that the related option contracts are the Standard & Poor's 100 Index Option ("OEX") and the Standard & Poor's 500 Index Options ("SPX", "NSX", and "SPL"). Proposed Rule 6.70, Interpretations and Policies .01.

[13] Rule 6.70, Proposed Interpretations and Policies .01.

[14] Rule 6.24, Interpretations and Policies .02. Generally, an initiation, cancellation, or change of an order relayed to a floor broker by hand signal also must be relayed immediately to the floor broker in written form. In Securities Exchange Act Release No. 24460 (June 5, 1987) the Commission approved the CBOE's proposal to exempt OEX options from this requirement in order to avoid unnecessary confusion and congestion in the OEX pit (File No. SR-CBOE-87-10). This exemption does not alter the requirement that all orders be in written form. Similarly, all the rules concerning order preparation and reporting remain in effect. In order to achieve consistency and avoid impediments, the CBOE proposes to extend the exemption granted to OEX to SPX and NSX.

[15] Rule 7.4(a).

[16] Rule 9.1, Interpretations and Policies .01 and .02.

[17] Rule 6.74, Interpretations and Policies .03 and .04.

[18] Rule 1.1(ll).

[19] An inter-regulatory spread also could involve a CBOE 50/OEX or CBOE 50/SPX spread.

[20] In this regard, the public limit order book shall be precluded from participating in inter-regulatory spread orders. When such orders are bid or offered at a differential, they may not be separated into individual parts. The futures' side of such spreads must be priced within the daily price range. The price of the options' side of such spreads may touch but shall not go through the current best bid or offer prevailing in the trading crowd. *See* CBOT Rule 352.02.

[21] *See* CBOT Rule 352.02.

[22] These transactions can be crossed only after they have been exposed to the trading crowd and must be executed in the presence of a CBOE official that is futures qualified. *See also* CBOT Rule 350.10.

[23] Rule 6.74, Interpretations and Policies .04.

individuals or organizations in JV and related contracts traded at the CBOE or the CBOT as well as information regarding any disciplinary action taken by either exchange against individuals or organizations that relates to trading activity in any of the above contracts. An addendum to that agreement was executed on September 28, 1988, that provides for the daily exchange of audit trail data in connection with JV and related contracts. The CBOE will be responsible for the surveillance of JV securities products and related options contracts, while the CBOT will be responsible for the surveillance of JV futures products.

II. Comments

The Commission received one comment letter on the proposed rule changes. The CME submitted a comment letter on October 31, 1988, that raised two concerns. First, the CME argues that a potential exists for CBOE members to pre-arrange futures transactions in connection with inter-regulatory spreads. The CME specifically states that, unlike the CBOT, the CBOE does not have a rule that prohibits prearranged trading.[24] As a result, the CME claimed that broker-dealers could follow CBOE rules and prearrange trades in inter-regulatory spreads. This would allow joint participants to execute spreads that would effectively violate CBOT and CFTC prohibitions against prearranged trading. Second, the CME claims that non-member JVPs may have an unfair advanage over members of the public in the execution of their index option orders. The CME notes that the CBOE proposal expressly favors one select group of non-CBOE members to the detriment of all other non-CBOE members. Consequently, the CME states that the CBOE's proposed rule changes fail to promote just and equitable principles of trade and fail to protect investors and the public interest.

In response, the CBOE submitted a November 4, 1988, comment letter addressing the CME's concerns.[25] With regard to the CME's prearranged trading concern, the CBOE states that the concern is unwarranted for several reasons. First, only CBOE members who are qualified to trade futures under CBOT rules are capable of executing inter-regulatory spreads. Thus, the CBOE emphasizes that those CBOE members will be subject to CBOT regulation and must comply with CBOT's and CFTC's prohibitions against prearranged trading. In addition, CBOT Rule 350.10 specifically provides a procedure for crossing that complies with Commodities Exchange Act Regulation 1.39(a)(2), which ensures that crosses are subject to the competitive outcry process of the trading crowd.[26] Finally, the CBOE notes that it will be exchanging with the CBOT audit trail data identifying all trades in the CBOE 250 futures and the index options by time and participant on a daily basis. Both CBOE and CBOT will be surveilling for, among other things, prearranged trading in violation of CBOE and CBOT rules.

The CBOE also states that the CME's claim that the CBOE proposal grants CBOT members an advantage in the execution of their orders not otherwise available to members of the public is without merit. The CBOE notes that the trading of futures and securities options on the floor of a national securities exchange is not without precedent. More specifically, the CBOE states that the trading of currency futures and securities currency options on the floor of the Phlx enables Phlx members to move quickly between the two markets in order to hedge positions. With regard to the CBOE 250, the CBOE emphasizes that access of non-member JVPs to the OEX and SPX is extremely limited. In particular, a non-member JVP is permitted to hand signal or flash an options order to an index option floor broker only to hedge positions previously established in the CBOE 250 futures contract. The CBOE notes that these non-member JVPs have less trading privileges than public customers in that they are not permitted to place orders on the limit order book or utilize CBOE's automatic execution system. In addition, the CBOE argues that in this day of telephonic and computer communication, physical presence on an exchange floor no longer yields a significant advantage and that any potential advantage is outweighed by the benefits to the public of increased liquidity and efficient public investor order execution.

III. Discussion

The JV agreement between the CBOE and the CBOT is a novel arrangement that will add a futures trading privilege to a CBOE regular membership. CBOE members who become futures qualified will be able to trade JV futures contracts on the Exchange floor. CBOE members trading JV-related options contracts, such as OEX and SPX, or JV securities contracts to be introduced in the future, will be able to hedge positions in these contracts by executing transactions in JV futures contracts, such as the CBOE 250. Such hedging transactions will be facilitated by placing index futures contracts on the same exchange floor as the index option contracts. The Commission believes that permitting JV futures contracts to be traded on the Exchange floor will contribute to the mechanism of a free and open market by enhancing index options market makers' ability to hedge their positions with futures. Such enhancement should enable market makers to better accommodate customer orders and to provide deeper and tighter markets.[27]

The concept of futures and options trading in adjacent pits is not new. As mentioned earlier, foreign currency options and futures trade in contiguous crowds on the Phlx floor. At the CME, stock index futures and options on stock index futures trade in adjacent crowds. The JV, however, does represent the first time a stock index futures pit will be located on a securities exchange floor. Nevertheless, the JV arrangement is designed so that regulatory concerns arising from the adjacent floor trading of futures and securities options is minimized.

Under the JV, CBOT members who are not CBOE members will have access to JV contracts traded on the Exchange floor. This access, however, is limited. CBOT full members who do not become CBOE members and CBOT partial members will have direct access to all JV futures products, and not to CBOE traded options. While the trading of JV futures products generally will be regulated by the CBOT, such non-members must file a JV application and agree to be bound by CBOE rules restricting their access to futures trading crowds and subjecting them to floor decorum and security rules that normally are applied only to CBOE members. The Commission believes that requiring non-member JVPs to comply with such rules should ensure that the floor trading activity of non-member JVPs will be restricted to futures trading crowds and that non-member JVPs will

[24] *See* discussion *infra* at p. 17–18 and note 30.

[25] *See* Letter from Nancy R. Crossman, First Vice President Legal Affairs, CBOE to Jonathan Katz, Secretary, SEC dated November 4, 1988.

[26] CBOT Rule 350.10 specifically permits the crossing of orders for specified inter-regulatory and intermarket spreads involving the CBOE 50 and CBOE 250 stock index futures contracts, provided the spread orders are offered competitively by open outcry in the open market. The inter-regulatory spread could be crossed only if the spread order is not accepted in the open market within a reasonable period of time.

[27] CBOE market makers who are active in OEX and SPX options customarily hedge their positions by establishing offsetting positions in the futures markets. *See* Division of Market Regulation, *The October 1987 Market Break*, 8–18 (February 1988).

be bound by Exchange rules respecting conduct on the Exchange trading floor.

If a CBOT member seeks to trade directly for its own account any stock index option on the CBOE floor, the CBOT member must acquire a regular CBOE membership. CBOT members who become CBOE members must register as brokers or dealers pursuant to section 15 of the Act.[28] In addition, CBOT members who become CBOE members and wish to transact business with the public must meet the requirements set forth in Chapter IX of the CBOE rules and must be approved by and registered with the Exchange as Options Principals. The Commission believes that such requirements are consistent with section 15 and 6(b) of the Act in that the requirements should ensure that only qualified members trade JV securities products in person.

The CBOE's proposal to allow CBOE non-members, who will be denied physical access to securities products traded on the CBOE floor, flashing privileges to all JV securities products and non-JV securities that are directly related to JV futures products also has been designed to be consistent with sections 6 and 15 of the Act. The CBOE non-members cannot flash an order directly into an index option pit, but must flash it to a CBOE floor broker on the catwalk, who would in turn deliver the order to the index options pit. Thus, a CBOE non-member that desires to trade any securities for its own account must use a CBOE floor broker to execute the order. Moreover, although non-member JVPs necessarily obtain some limited time and place advantages by their presence on the CBOE floor, the Commission believes that the significance of such advantages is reduced due to the substantive restrictions placed on these non-members. The most important restriction, of course, is that non-member JVPs can effect index options transactions only to hedge existing CBOE 250 futures positions. In addition, option orders from non-member JVPs may not be accepted by an Order Book Official or placed on RAES. Because of these and other restrictions, the Commission believes that the CME concern that the JV provide non-member JVPs an inappropriate competitive advantage is incorrect. Moreover, to the extent such non-members do gain a limited time and place advantage in executing their orders, the Commission believes that such advantages, limited to hedging transactions, are an appropriate to increase depth and liquidity in index options contracts.

In addition to the ability of CBOE non-members to flash orders to CBOE floor brokers, CBOE members will have reciprocal flashing privileges into the JV futures pits. The Commission believes that the proposed flashing rules will facilitate orders in securities by allowing such orders to be flashed but at the same time limiting such flashing to orders used to hedge positions in JV futures contracts. The Commission believes, in addition, that extending to SPX and NSX the exemption granted to OEX from the requirement that orders relayed by hand signal must be immediately followed by a written order will facilitate transactions in securities while preserving record-keeping and reporting safeguards. The fact that member organizations doing business with non-member JVPs will be exempted from several of the sales practice requirements in Chapter IX of the CBOE's rules recognizes the fact that non-member professional traders are more financially sophisticated than other non-members. The Commission believes that proposed exemptions will facilitate transactions in securities by enabling Exchange members to transact business on the Exchange with non-member JVPs without having to comply with the requirements of Chapter IX.

The Commission believes that allowing inter-regulatory spread orders to be crossed will further contribute to a deep and liquid market and will facilitate transactions in securities. Before a member can cross an inter-regulatory spread, that member must offer the spread order competitively by open outcry in the OEX and SPX options pit. The member must better the existing market by bidding above or offering below the existing quotes for that spread transaction. Thus, any member seeking to cross an inter-regulatory spread order will narrow the bid-ask differential for that spread. If the spread order is not accepted in the open market after a reasonable time, the inter-regulatory spread may be crossed.[29] The Commission also believes that clarifying the regulatory responsibility for each leg of an inter-regulatory spread order will expedite the enforcement of each jurisdiction's regulations and foster coordination and cooperation between the jurisdictions involved.

The Commission also does not believe that the CME comment concerning prearranged trading is meritorious. Initially, the Commission observes that the CME's implication that prearranged trading in the securities markets is not prohibited is simply wrong. In this regard, prearranged trading is prohibited by section 9(a)(1) of the Securities Exchange Act of 1934.[30] Therefore, regardless of whether the CBOE has a rule prohibiting these transactions, prearranged trades would be prohibited under the Securities Exchange Act. Moreover, the Commission notes that the CBOE considers prearranged trading to be a practice inconsistent with just and equitable principles of trade and a violation of CBOE Rule 4.1. In particular, the CBOE has specified surveillance procedures designed to identify and deter prearranged trading. The Commission also notes that the CBOE has taken disciplinary action when it identifies prearranged trading. The Commission recognizes, however, that prohibitions or prearranged trading in the futures markets have been interpreted to prohibit, under some circumstances, the upstairs arrangement of block or "facilitation" trades involving a futures commission merchant ("FCM") and its customer, including bona fide transactions negotiated at arms length and exposed to the trading crowd prior to execution. While this interpretation does diverge from the treatment of such trades on options exchanges, the Commission notes that CBOT and CFTC restrictions would continue to apply to the futures portion of the transaction. In addition, CBOE rules will require that the entire transaction be exposed to the trading crowd and subject to review be a CBOE official who is a qualified FCM. Consequently, the Commission does not believe that the CBOE's proposed rules regarding inter-regulatory spreads can lead to transactions that would be violative of CBOT or CFTC prearranged trading provisions.

Finally, the Commission believes that the CBOE has designed adequate procedures to conduct surveillance, along with the CBOT, of the JV trading. The CBOE and CBOT badge system should ensure that only eligible persons enter the options or futures pits on the CBOE floor. The regulatory agreement entered into by the CBOE and the CBOT will assist in preventing fraudulent and

[28] 15 U.S.C. 780 (1982).

[29] As previously noted, this must be done in the presence of a futures qualified CBOE floor official.

[30] *See* 15 U.S.C. 78i(a)(1)(C) (1982). Section 9(a)(1)(C) provides that it is illegal to enter any order or orders on a national securities exchange for the sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties. *See also*, Report of Special Study of the Options Markets, 96th Congress, 1st Sess. (Committee Print 96-IFC3) December 22, 1978 at 169.

intermarket manipulative acts and other abusive trading practices related to the trading of JV products by providing for the exchange of relevant surveillance data [31] for JV-related securities and futures products.

For the above reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [32] and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,[33] that the proposed rule change is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[34]

Jonathan G. Katz,

Secretary.

Dated: November 10, 1988.

[FR Doc. 88-26688 Filed 11-17-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26279; File No. SR-NYSE-88-34]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Certain Intermarket Trading Restrictions adopted by the New York Stock Exchange and the Chicago Mercantile Exchange, and the New York Stock Exchange and the New York Futures Exchange

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on November 1, 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 proposed rule change consists of two agreements in regard to certain intermarket trading restrictions between the New York Stock Exchange and the Chicago Mercantile Exchange and the New York Stock Exchange and the New York Futures Exchange.

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. 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 Change

(1) Purpose

On April 13, 1988 the Exchange issued an Information Memorandum to its membership stating that it was considering the adoption of an interpretation whereby trading in index futures immediately prior to and with knowledge of the execution of one or more "baskets" of stock that favorably impact the value of the underlying index might constitute frontrunning, and thus might constitute a violation of just and equitable principles of trade under Exchange Rule 476. (See Exhibit A.) [1] In this Information Memorandum the Exchange invited comments from its members and member organizations concerning the proposed interpretation. The comments received by the Exchange are discussed in section 5 *infra*.

The New York Stock Exchange and the Chicago Mercantile Exchange ("CME"), and the New York Stock Exchange and the New York Futures Exchange ("NYFE") have recently determined to adopt a policy, uniform as between the respective markets, (see Exhibit B), which specifically defines and prohibits certain intermarket trading between their respective equities and futures markets, while not prohibiting legitimate trading activities.[2]

The policy prohibits a member or person associated with a member or member organization from executing or causing the execution of, for an account in which such member or person has a direct or indirect pecuniary interest, or for an account with respect to which such member or person exercises investment discretion, certain transactions, as described below, to take advantage of material, non-public information which can reasonably be expected to have an immediate, favorable impact in relation to such transactions. Any member or persons executing or causing the execution of such transactions may be in violation of just and equitable principles of trade under Rule 476.

Specifically the policy provides that a transaction in any stock index futures contract, or option on a stock index future, when such member or person has acquired knowledge of the imminent execution of another person's stock program transaction, may be in violation of just and equitable principles of trade, where, as noted above, a member or person associated with a member is trading to take advantage of material, non-public information which can reasonably be expected to have an immediate, favorable impact in relation to such transaction. Moreover, the NYSE, the CME and the NYFE have also recognized that transactions in stock index futures or options on stock index futures may have some effect on the market in the underlying equities themselves. Therefore, the memorandum states that conversely, certain transactions in the reverse order could also constitute a violation of just and equitable principles of trade. In this instance, stock program transactions, when such member or person has acquired knowledge of the imminent execution of another person's order(s) in stock index futures contracts or options on stock index futures, may also be in violation of just and equitable principles of trade.

The exchanges have agreed that it is not necessary to demonstrate that another person has been disadvantaged

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[31] The CFTC recently approved a rule by the CBOT to allow exchange for physicals ("EFPs") involving the CBOE 50 and 250 futures to be quoted and executed in the CBOE 50 and 250 pits during trading hours. In response to concerns of the Division of Market Regulation that such activity would mean that the CBOT was providing facilities for the quotation of stock transactions which would require the CBOT to register as a national securities exchange under section 6 of the Securities Exchange Act of 1934, the CBOT revised its Regulation 444.01 on November 8, 1988. In particular, the CBOT deleted the portion of Regulation 444.01 that permitted CBOE 50/ CBOE 250 EFP transactions during trading hours provided that they were offered competitively by open outcry in the open market.

[32] 15 U.S.C. 78f (1982).

[33] 15 U.S.C. 78s(b)(2) (1982).

[34] 17 CFR 200.30-3(a)(12) (1988).

[1] Exhibits A and B are available for inspection and copying in the Commission's Public Reference Room.

[2] The policy filed herein pertains to intermarket trading involving any stock index futures and the NYSE equities market, regardless of whether the future is traded on the CME, the NYFE, or another futures exchange. The NYSE's policies with regard to frontrunning in the context of trading in standardized options on individual stocks, and frontrunning in the context of trading in index options and options on over-the-counter stocks, were filed in SR-NYSE-87-36. (*See* Securities Exchange Act Release No. 25233 (December 30, 1987), 53 FR 296).

when a determination is being made as to whether a member or person has taken advantage of material, non-public information. Furthermore, such member or person may be deemed to be in violation of just and equitable principles of trade regardless of whether such other person has given permission for such trading.

However, this policy is not intended to prevent such member or person from establishing, in a futures market, a bona fide hedge of risk such member or person may have assumed or agreed to assume in facilitating the execution of any other person's stock program orders. The risk to be hedged must be the result of having established a position or having given a firm commitment to assume a position, and the offsetting hedging transaction must be commensurate with such risk.

Additionally, this policy is not intended to prevent a member or person from implementing proprietary market strategy involving a stock program and a related stock index futures transaction by executing the stock index futures trade(s) prior to the execution of the stock program. However, the execution of a transaction in one market to take advantage of such member's or person's imminent transaction in a related market may be considered to be a manipulative activity.

The agreement between the NYSE and the NYFE is identical to that between the NYSE and the CME, with one additional restriction. This agreement further states that a transaction in any stock index option, when such member or person has acquired knowledge of the imminent execution of another person's order(s) in stock index futures contracts or options on a stock index future may also be in violation of just and equitable principles of trade.

Therefore, this agreement states that this policy is not intended to prevent such member or person from establishing, in a futures market, a bona fide hedge of risk such member of person may have assumed or agreed to assume in facilitating the execution of any other person's stock index option orders as well as another person's stock program orders.

Similarly, this agreement states that a member or person associated with a member organization who implements a proprietary market strategy involving stock index option transaction(s) as well as a stock program and a related stock index futures transaction by executing the stock index futures trade(s) prior to the execution of the stock index option transaction(s) as well as the stock program will not be deemed to be in violation of this policy.

(2) Statutory Basis for the Proposed Rule Change

The Exchange believes the proposed rule change will promote the purposes of section 6(b)(5) of the Act in that it can be said to "promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating * * * transactions in securities, * * * and, in general, to protect investors and the public interest."

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In its April 13, 1988 Information Memorandum notifying its membership of the possible application of the frontrunning policy to index futures trading, the NYSE sought comments from its members. Comment letters were received from Merrill Lynch, Pierce, Fenner and Smtih Inc., Morgan Stanley & Co. and the Securities Industry Association. These comment letters are annexed as part of Exhibit A.

The NYSE believes that the concerns raised in these comment letters have been substantially addressed by the more specific definition of frontrunning as applied to trading in baskets of stocks and futures or options on futures agreed to by the NYSE and the CME, and the NYSE and the NYFE, and set forth in the Information Memoranda being filled herein. The most significant concerns were that legitimate trading activities, such as the facilitation of customer orders and the hedging of proprietary positions, which are, of course, beneficial to the market, should not be inhibited by this rule.

The Information Memoranda address these concerns by stating that the NYSE does not intend to prohibit a bona fide hedge assumed in facilitating the execution of any other person's stock program orders. Additionally, the NYSE does not seek to inhibit proprietary trading, including the execution of stock index futures prior to a stock program, unless the transaction is intended to take advantage of that member or person's imminent stock program transaction. The NYSE's more specific definition of intermarket frontrunning as a transaction based upon the knowledge of another person's activity, and not a member or member organization's own activity (unless manipulative), whether in stocks or stock index futures contracts or options, prohibits clearly abusive trading, while not prohibiting member firms from engaging in legitimate hedging of their own positions.

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 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 20569.

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-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 9, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 14, 1988.

[FR Doc. 88-26757 Filed 11-17-88: 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16633; (811-3227)]

Sea Cash Management Fund, Inc. (Formerly, Principal Cash Management Fund, Inc.); Application

November 10, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Sea Cash Management Fund, 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 Date: The application was filed on November 1, 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 December 5, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for 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, B304-6991 East Camelback Road, Scottsdale, Arizona 85251.

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 either 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 July 21, 1987, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On July 21, 1987, Applicant also filed Form N-1 under the Securities Act of 1933, but such registration statement did not become effective and Applicant never made a public offering of its securities. Applicant was incorporated in the State of Maryland but has never conducted any business. Applicant does not have any assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no shareholders and is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-26689 Filed 11-17-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Office of Women's Business Ownership; Management and Technical Assistance Application Announcement

Summary: The Small Business Administration, Office of Women's Business Ownership (OWBO) announces that it is accepting application proposals under its' Women's Business Ownership program to provide management and technical assistance services to eligible Women's Owned and Operated small business concerns/individuals. Projects are to start in FY 89.

The announcement number is OWBO-89-001

Funding Instrument: The funding instruments, as defined by the Federal Grants and Cooperative Agreements Act of 1977 (31 U.S.C. 6304/6305) will be cooperative agreements.

Objectives of the Management and Technical Assistance Program

The goal of OWBO is to assist start-up and established small businesses owned by women, to include socially and/or economically disadvantaged women businesses, through long term training and counseling to achieve competitive viability. Towards that end, it is the intent of this program to provide financial, management and marketing assistance to women or women owned enterprises eligible for assistance under "Women's Business Ownership Act of 1988" through the use of professional entities with proven methods of providing competent assistance.

These entities shall be selected through a competitive process emphasizing their prior experience, methodology, and success. Financial, management and marketing assistance includes, but is not limited to, those services which are provided to women businesses in the areas of planning, research and development, identification of new business opportunities, loan packaging, financial counseling, and marketing assistance.

Closing Date: Applicants must submit their application/proposal on or before December 23, 1988, 3:00 p.m., local time, to the U.S. Small Business Administration, 1441 L Street, NW., Washington, DC, Room 219.

Eligible Applicants: This announcement is open to private for-profit, or non-profit organizations. This announcment is *not open* to states and local governments, nor to colleges, universities, or other institutions of higher education.

Application Materials: Applications will be forwarded to interested participants upon written request to the U.S. Small Business Administration, Office of Procurement and Grants Management, 1441 L Street, NW., Room 221, Washington DC 20416. All awards will be announced in the **Federal Register.**

Evaluation and Award Process: All proposals received as a result of this announcement will be evaluated by an SBA Review Panel. The awarding of OWBO Cooperative Agreements is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Disposition of Proposals: Notification of awards will be made by the Grants Management Officer. Organizations whose proposals are unsuccessful will be sent an awards list advising them of the successful awardees. Nothing in this announcement shall be construed as committing OWBO to divide available funds among all qualified applicants.

Date: November 14, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-26655 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0188]

Twin Ports Capital Co., Inc.; Surrender of License

Notice is hereby given that Twin Ports Capital Co., Inc., 1228 Poplar Avenue, Superior, Wisconsin 54880 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Twin Ports Capital Co., Inc. was licensed by the Small Business Administration on March 20, 1984

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender

was accepted on November 7, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: November 10, 1988

[FR Doc. 88-26659 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Birmingham, will hold a public meeting, at 9:30 a.m. to 1:00 p.m., on Friday, December 9, 1988, in the Conference Room of the Birmingham District Office, 2121 8th Avenue, North, Suite 200 Birmingham, Alabama 35203, 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 James C. Barksdale, District Director, U.S. Small Business Administration, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama 35203, 205/731-1341.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 9, 1988.

[FR Doc. 88-26656 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting, at 10:00 a.m. Tuesday, December 6, 1988, 211 Main Street—5th Floor, Conference Room 543, San Francisco, California, 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 Michael R. Howland, District Director, U.S. Small Business Administration, San Francisco District Office, 211 Main Street, 4th Floor, San Francisco 94105, 415/974-0642.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 14, 1988.

[FR Doc. 88-26735 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-0379]

First Interstate Equity Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing SBICs (12 CFR 107.102 (1988)) under the name of First Interstate Equity Corporation, 100 West Washington, Phoenix, Arizona 85003 for a license to operate in the State of Arizona as a Corporation under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 *et seq.*).

The applicant will begin operations with private capital of $1,000,000.

The officers, directors and shareholders of the applicant are as follows:

Edmund G. Zito, 8689 East Thoroughbred Trail, Scottsdale, Arizona 85258—President and Treasurer

David Harrison Bonsall III, 2057 West Cambridge, Phoenix, Arizona 85009—Vice President, Secretary and Director

Robert H. Dockworth, 58005 East Vici Del Crilo, Pasadina Valley, Arizona 85253—Director

James G. Vanasek, 9752 East Wood Drive, Scottsdale, Arizona 85260—Director

Leon G. Steve, 1539 Edgemont, Phoenix, Arizona 85003—Director

First Interstate Bank of Arizona, N.A., 100 West Washington, Phoenix, Arizona 85009—Sole Shareholder

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Phoenix, Arizona.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: November 8, 1988.

[FR Doc. 88-26736 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-0210]

Norwest Venture Partners—II, a Minnesota Limited Partnership; Application for License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) under the name of Norwest Venture Partners—II, a Minnesota Limited Partnership, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 as amended (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The proposed general and limited partners and investment advisor are:

General Partners

Robert F. Zicarelli, 8777 East Via De Ventura, Suite 335, Scottsdale, Arizona 85258

Daniel J. Haggerty, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Stephen J. Schewe, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Dale J. Vogel, 777 108th Avenue, N.E., Suite 2460, Bellevue, Washington 98004

Stpehen R. Sefton, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

John E. Lindhal, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Douglas E. Johnson, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Timothy A. Stephanek, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Leonard J. Brandt, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402
John L. Thomson, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402
Ernest C. Parizeau, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402
John P. Whaley, 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

All the foregoing are general partners of Itaska Partners, a Minnesota General Partnership, whose address is the same as Norwest Venture Capital Management, Inc.

Limited Partner

Norwest Limited, Inc., 90 South Seventh Street, Minneapolis, Minnesota 55402

Investment Advisor

Norwest Venture Capital Management, Inc., 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402

Norwest Corporation is a bank holding company and financial services organization and the parent company of the Investment Advisor, Norwest Growth Fund, Inc., Norwest Investors, Inc. and Norwest Limited, Inc. It also owns approximately 20% of the limited partnership interests of Northwest Venture Partners.

The Applicant proposes to begin operations with a capitalization of approximately $5,000,000 as a part of the first funding which will be increased at a later date to $75,000,000. The Applicant will be a source of equity capital and long term loan funds for qualified small business concerns. The Applicant may render management consulting services to small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, and submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Minneapolis, Minnesota area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated November 9, 1988.

[FR Doc. 88-26658 Filed 11-17-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 164; Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the RTCA Special Committee 164 on Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment to be held December 13-14, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 12 noon.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) review and approve terms of reference, RTCA Paper No. 373-88/SC164-1; (3) review of prior RTCA activities, RTCA/DO-170, and latest changes; (4) discussion on extent of the problem; (5) develop initial work program and schedule; (6) assignment of tasks; (7) other business; and (8) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 14, 1988.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 88-26705 Filed 11-17-88; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the first meeting of RTCA Special Committee 165 on Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services to be held December 5-7, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 12 noon.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) review and approve terms of reference, RTCA Paper No. 385-88/SC165-1; (3) briefings on aeronautical mobile satellite services; (4) discussion on extent of the problem; (5) develop initial work program and schedule; (6) assignment of tasks; (7) other business; and (8) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 14, 1988.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 88-26706 Filed 11-17-88; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

[Docket No. IRA-38]

Inconsistency Ruling No. IR-21; Connecticut Statute and Regulations Governing Transportation of Radioactive Materials

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of decision on appeal.

SUMMARY: In response to the appeal of the State of Connecticut from the findings made in Inconsistency Ruling No. IR-21 (52 FR 37072; October 2, 1987), that Inconsistency Ruling is affirmed.

EFFECTIVE DATE: November 10, 1988.

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

A. General Authority and Preemption under the HMTA

Section 112(a) of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. 1192, 93rd Cong., 2d Sess., 37–38 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress apparently intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the Hazardous Materials Regulations (HMR), issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by the Office of Hazardous Materials Transportation (OHMT) under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 App. U.S.C. 1811(b); 49 CFR 107.215 through 107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, October 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and applied in a series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in its inconsistency ruling process.

OHMT has incorporated into its procedures (49 CFR 109.209(c)) the following criteria for determining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon U.S. Supreme Court decisions on preemption. *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to accomplishing and executing the HMTA and the HMR; a requirement which is such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the OHMT's regulatory program.

B. Chronology

On July 16, 1986, Citizens Against Nuclear Trucking (CANT) filed an application for an administrative ruling seeking a determination that certain portions of Connecticut General Statutes (CGS) sections 16a–106 (a) and (b) and Connecticut Regulations sections 19–409d–51, 53, 54, and 55 regulating the transport from, into and through Connecticut of certain radioactive materials are inconsistent with the HMTA and the HMR. These statutory and regulatory provisions contain notice, routing, permit, information, documentation and time requirements.

On September 28, 1987, the Director, OHMT issued Inconsistency Ruling 21 (IR–21), which was published at 52 FR 37072 on October 2, 1987. The Director determined that the Connecticut permitting system for transportation of certain radioactive materials under Connecticut General Statutes Sections 16a–106(a) and (b) and Connecticut Regulations sections 19–409d–51, 53, 54 and 55 is inconsistent with the HMIA and the HMR and therefore preempted.

II. The Appeal

On October 29, 1987, the State of Connecticut (Connecticut) filed an appeal of IR–21 with the Administrator of the Research and Special Programs Administration. Connecticut filed a brief in support of its appeal by letter dated December 21, 1987. The arguments made by the appellant are discussed in the following sections. Comments supporting affirmance of IR–21 were filed by the Hazardous Waste Treatment Council, Nuclear Metals, Inc., Northeast Utilities, and CANT.

III. Decision on Appeal

A. Introduction

I am issuing this decision in my capacity as Administrator of the Research and Special Programs Administration (RSPA). I have thoroughly considered all of the issues raised in the appeal and the discussions of them in the comments. All of the issues being appealed were discussed exhaustively by the Director of OHMT in IR–21; thus I will respond only to the

specific issues raised on appeal and generally will not reiterate the Ruling's discussions, with all of which I fully concur.

B. Connecticut's Argument

Connecticut appeals the finding in IR–21 that the Connecticut permitting system is inconsistent with the HMTA and the HMR. Connecticut asserts that "there is simply no evidence in the record to support the conclusion that the Connecticut regulatory scheme, as actually administered, makes it impossible for a person to comply with both the Federal and state requirements for the transportation of radioactive materials, nor is there any evidence that the 'state requirements are an obstacle to the execution of Federal law' " (Citation omitted). Appellant's Brief at p. 7. Connecticut states that, although the statutory scheme that CANT is challenging has been in operation for over ten years, CANT failed to present any evidence that the regulations, as administered by the Connecticut Department of Transportation (ConnDOT), have posed any problem with respect to the safe transportation of hazardous materials. Connecticut argues that IR–21 merely speculates as to potential conflict with Federal laws when there is nothing in the record to show that actual experience has resulted in a conflict.

Connecuticut argues that, for example, the permit processing provision, which IR–21 found inconsistent because of its inherent propensity to cause unnecessary delay, is in fact aimed at expediting the issuance of permits. Connecticut Regulation section 19–409d–54 states:

> No applications will be processed without a two-hour advance notice nor will an application be accepted more than one working day in advance of the scheduled move except that the Commissioner reserves the right to waive the advance requirement notice when it is in the best interest of public health and safety.

Connecticut states that "the Commissioner of ConnDOT has stated that 'permit applications can be received by telphone or by telecopier and as a rule approval of an application takes two (2) hours. The permit can be sent to the applicant via telecopier in order to expedite the process.' " Appellant's Brief at p 9, quoting the Affidavit of J. William Burns dated October 31, 1986. Therefore, Connecticut argues, "it is difficult, if not impossible, to see how an average two (2) hour permit application processing time can constitute an 'unreasonable delay.' " Appellant's Brief at p. 9.

Connecticut also stated in its appeal that:

> Significantly, no trucking firm or other organization involved in the actual transportation of radioactive material filed any response to CANT's application [July 16, 1986] challenging the Connecticut regulatory scheme—no negative comments were submitted to the RSPA. In short, the organizations directly affected by the challenged regulatory scheme did not intervene to support CANT's challenge.

Comments on an application for an inconsistency ruling are not necessary for a determination by OHMT; the presence or absense of comments does not dictate the result. However, in response to Connecticut's appeal, three organizations, in addition to CANT, submitted comments.

C. Other Comments

The Hazardous Waste Treatment Council is an association comprised of more than 65 commercial firms engaged in the treatment and transportation of hazardous substances and wastes. The Council stated that several of its member companies engage in the interstate transportation of radioactive materials and therefore stand to be directly affected by Connecticut's regulatory scheme. The Council, commenting in support of IR–21, noted that the basis for IR–21 is not speculative and that IR–21 properly reflects Congressional intent that the HMTA and the HMR provide a uniform national standard for hazardous materials transportation. The Council further commented that State requirements, such as Connecticut's delay hazardous materials shipments, disrupt the orderly movement of these materials, and are at odds with a transportation system that ensures the highest level of safety on a nationwide basis.

The Council took particular issue with Connecticut's argument that IR–21 was not supported by sufficient evidence in the record that the State's permitting system would unreasonably burden hazardous materials transportation:

> With regard to Connecticut's specific complaints about the sufficiency of the evidence, it is difficult to determine what type of evidence the State contemplates. To satisfy Connecticut, the evidence would have to conclusively demonstrate that the State's scheme is a burdensome obstacle to shipments of radioactive materials. But, the effect of such regulations on hazardous materials shippers and carriers may not be readily ascertainable. In the aggregate, factors such as numerous delays, redundant certification and information requirements and simply the task of monitoring the requirements of multiple jurisdictions in which a firm operates combine to impose a substantial and costly burden on such a firm. Connecticut takes no account of such effects of its statute.

The Council also argued that Connecticut presents inadequate evidence to support its position (e.g., the affidavit of the Commissioner of ConnDOT) "that its regulations do not unnecessarily delay shipments and that permit applications are processed 'as a rule' in a few hours." The Council stated, "this vague statement both fails to establish the range of delays a carrier may face under Connecticut's rules and wrongly assumes that *any* unnecessary delay or uncertainty in the progress of hazardous materials is acceptable."

Northeast Utilities (NU) is a registered public utility holding company whose subsidiaries supply electric and natural gas service to customers in Connecticut, are responsible for the operation of four nuclear power plants in Connecticut, and engage in the shipment of radioactive materials which are and will be subject to the Connecticut permitting system. NU commented that:

> the Connecticut regulations have been fairly applied and that most applications for a permit are procesed promptly. Further, the Connecticut Department of Transportation has granted appropriate relief when warranted by extraordinary circumstances. It is for this reason that NU chose not to comment in the inconsistency proceeding now being appealed by the State of Connecticut.
>
> Nonetheless, NU believes that it is appropriate to comment on Connecticut's appeal for several reasons. First, NU agrees with DOT's analysis and decision in IR–21 that the Connecticut regulatory scheme creates an HMTA and the [HMR]. The Connecticut regulatory regime has the propensity to cause delay, could cause confusion and undermine compliance with the HMR, creates additional administrative burdens, and intrudes on areas within DOT's exclusive jurisdiction under the HMTA and HMR. Second, although the Connecticut statute and regulations have been applied fairly in the past so as to minimize excessive burdens on shippers and carriers, they have imposed additional burdens and the possibility nevertheless exists that this regulatory regime could be implemented in the future so as to cause more significant burden and delay.

NU points out that the basis of Connecticut's appeal is that there has been no evidence in the record of a dual compliance problem or actual obstacle, but that:

> what Connecticut overlooks is that DOT has already found that actual evidence of diversion and delay is not required under the HMTA as a basis for finding that a state or local governmental requirement is inconsistent under the "obstacle test". See, e.g., IR–21, 52 Fed. Reg. at 37074; IR–22, 52

Fed. Reg. at 46583; IR–3, 46 Fed. Reg. at 18921; IR–2, 44 Fed. Reg. at 75571 . . . For DOT to blind itself to the potential for diversion and delay would not be consistent with its responsibilities under the HMTA.

NU also commented tht Connecticut does not seem to understand that sanctioning the Connecticut regulatory scheme would unfairly shift the burden of radioactive materials transportation from one jurisdiction to another, even though Connecticut itself pointed that out in its pleadings in the pending lawsuit regarding the validity of DOT's denial of New York City's request for a waiver of preemption. Further, NU commented that Connecticut's time of transport restrictions and additional permit information requiremer.ts unduly impede the transportation of radioactive matgerials. Finally, UN pointed out that:

> if every state were to adopt a similar regulatory regime, there would be no question that delays would result and that the uniform regulatory system intended by Congress, when it enacted the HMTA as a means of promoting transportation safety, would be thwarted to the detriment of the public interest.

Nuclear Metals, Inc. is a large volume generator of low-level radioactive waste shipments, the majority of which transit the State of Connecticut. Nuclear Metals commented that Connecticut's time of travel restrictions have resulted in delays and even routing changes to avoid travel through the state. Nuclear Metals added that these effects are contrary to the safe handling of radioactive wastes and urged that IR–21 be sustained against Connecticut's appeal.

CANT commented that IR–21 should be affirmed, and noted that Connecticut's argument that its regulatory scheme should not have been found inconsistent because it is administered in a consistent fashion really constitutes a tacit admission that its scheme is in fact inconsistent.

I have fully considered all of the comments submitted, as summarized above, and agree that IR–21 should be affirmed.

D. Decision

Connecticut argues that its two-hour permit processing time does not constitute an unreasonable delay. IR–21 found this provision to be inconsistent with the HMTA and the HMR for several reasons. First, a similar two-hour advance notice requirement with no stated purpose was found inconsistent in IR–20, 52 FR 24396 (June 30, 1987). As in IR–20, there is no evidence in the record that the Connecticut notice requirement serves any specific purpose. Furthermore, Connecticut's requirement applies statewide while the one at issue in IR–20 applied only to certain bridges and tunnels under the jurisdiction of the Triborough Bridge and Tunnel Authority.

Second, IR–21 found that the prohibition on applications more than one working day in advance of each scheduled shipment, combined with the statutory provision for three or more days to act on the application, tends to ensure delays in hazardous materials transportation. As stated in IR–21, "the Connecticut statute at issue here provides three working days for a decision and further allows additional time if the Commission determines it is required to evaluate the application. Unnecessary delay is inherent in such a provision; therefore, it is inconsistent with the HMTA and the HMR." 52 FR 37075.

The HMR at 49 CFR 177.853 provide that "all shipments of hazardous materials shall be transported *without unnecessary delay*, from and including the time of commencement of the loading of the cargo until its final discharge at destination" (emphasis added). Connecticut's permit processing provision fails the 'dual compliance' test and therefore is inconsistent with the HMTA and the HMR. As the Hazardous Waste Treatment Council commented, Connecticut's statement that permit applications are, as a rule, processed in a few hours, "both fails to establish the range of delays a carrier may face under Connecticut's rules and wrongly assumes that any unnecessary delay or uncertainty in the progress of hazardous materials is acceptable."

Moreover, Connecticut's assertion that actual, rather than potential, conflict must exist before a determination of inconsistency may be made is inaccurate. The Director of OHMT has consistently found that "the mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possibly permanent, change in traffic patterns." IR–3, 46 FR 18921 (quoted in IR–20, supra). Northeast Utilities supported this conclusion; it noted that, although the Connecticut system had been fairly applied in the past, it nevertheless has imposed additional burdens and the possibility exists that the system could be implemented in the future so as to cause more significant burden and delay.

The Director, OHMT, also determined that because Connecticut's permit processing provision is inextricably linked to its inconsistent statutory permitting requirements it also is inconsistent with the HMTA and the HMR. IR–21 found that although hazardous materials transportation permits are not inconsistent *per se*, the field of radioactive materials transportation safety is unique:

> Because the HMTA and the HMR have almost completely occupied the field of radioactive materials transportation safety, state and local transportation requirements relating thereto are limited to: (1) Traffic control or restrictions applying to all traffic, (2) designation of alternatives preferred routes under 49 CFR 177.825(b), (3) adoption of Federal or consistent requirements or those for which preemption has been waived, (4) enforcement of the requirements described in (3), and (5) imposition of transit fees to finance the enforcement described in (4) as well as emergency response.

52 FR 37074. In light of the virtually total occupation of the field of radioactive materials transportation, shipments of radioactive materials are presumptively safe based on their compliance with Federal regulations. Therefore, state or local provisions, like Connecticut's, requiring approval or authorizing conditions to be established (other than compliance with the Federal regulations) constitute an obstacle to the accomplishment of the HMTA and the HMR.

Therefore, I affirm the finding in IR–21 that the Connecticut permitting system is inconsistent with the HMTA and the HMR.

IV. Conclusion

For the reasons indicated above and for the reasons set forth in IR–21 itself, I affirm the determination by the Director of the Office of Hazardous Materials Transportation in IR–21 that Connecticut General Statutes sections 16a–106 (a) and (b) and Connecticut Regulations sections 19–409(d)–51, 53, 54 and 55 are inconsistent with the HMTA and the HMR and, therefore, are preempted under 49 App. U.S.C. 1811(a).

This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC, on November 10, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88–26651 Filed 11–17–88; 8:45 am]

BILLING CODE 4910–60–M

Maritime Administration

[Docket S-837]

Waterman Steamship Corp.; Notice of Amended Application To Provide Trade Route 18/17 Service

Waterman Steamship Corporation (Waterman), by letter dated November 14, 1988, has requested an amendment to the **Federal Register** Notice dated November 7, 1988 (53 FR 44973) to delete the word "bareboat" with regard to the C9-S-81d LASH type and vessel named GREEN VALLEY.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies.)

By Order of the Maritime Subsidy Board.

Date: November 17, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-26913 Filed 11-17-88; 11:12 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 15, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: Focus Group Interviews With Taxpayers on IRS Notice Clarity
Description: The group interviews are necessary to obtain taxpayer input on the clarity of selected IRS notices. The results will be used to develop: (1) Alternative versions of the notices tested and (2) standards to assist IRS personnel responsible for the development of notices. Affected public is 300 participants (100 for Part I; 200 for optional Part II).
Respondents: Individuals or households
Estimated Number of Respondents: 300
Estimated Burden Hours Per Response: 2 hours
Frequency of Response: One-time group interviews
Estimated Total Reporting Burden: 600 hours
OMB Number: 1545-0416
Form Number: 5302
Type of Review: Revision
Title: Employee Census
Description: This form is used in conjunction with Forms 5300, 5301, and 5307 when applying to IRS for a determination letter stating the pension or profit-sharing plan of the employer meets the requirements of section 401(a) of the Internal Revenue Code. The data submitted allows the IRS to determine that the plan does not discriminate in favor of the prohibited group.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 52,000
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 10 hours 31 minutes
Learning about the law or the form, 42 minutes
Preparing and sending the form to IRS, 54 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 629,720 hours
OMB Number: 1545-0725
Form Number: 928
Type of Review: Revision
Title: Fuel Bond
Description: Certain sellers of gasoline and diesel fuel may be required under section 4101 to post bond before they incur liability for gasoline and diesel fuel excise taxes imposed by sections 4081 and 4091. This form is used by taxpayers to give bond and provide other information required by Regulations section 48.4101-1.
Respondents: Individuals or households, Business or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 500
Estimated Burden Hours Per Response:
Recordkeeping, 4 hours 32 minutes
Learning about the law or the form, 1 hour 4 minutes
Preparing the form, 2 hours 7 minutes
Copying, assembling, and sending the form to IRS, 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 3,995 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget Rooim 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-26741 Filed 11-17-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 15, 1988.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1073
Form Number: 8801
Type of Review: Resubmission
Title: Credit for Prior Year Minimum Tax
Description: Form 8801 is used by individuals, estates, trusts, and corporations to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year to be carried forward for use in a future year.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 100,000
Estimated Burden Hours Per Response:
Recordkeeping, 1 hour 33 minutes
Learning about the law of the form, 1 hour 3 minutes
Preparing the form, 1 hour
Copying, assembling, and sending the form to IRS, 17 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 389,000 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and

Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

FR Doc. 88-26742 Filed 11-17-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 15, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0019

Form Number: FMS-1133

Type of Review: Extension

Title: Claim Against the United States for the Proceeds of a Government Check

Description: If a payee claims non-receipt of a Treasury check, the FMS-1133 claim form and a copy of the negotiated check are sent to the payee. If the payee wishes to claim forgery, he or she answers questions on the form, signs and returns it to the Adjudication Division. Claims examiners review the claim to determine final action on the case.

Respondents: Individuals or households

Estimated Number of Respondents: 220,853

Estimated Burden Hours Per Response: 10 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 36,882 hours

Clearance Officer: Rita Franklin, (301) 436-5300, Programs Section, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782

OMB Reviewer: Milo Sunderhauf, (201) 395-6880; Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-26743 Filed 11-17-88; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on December 7 and 8, 1988. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue NW., Washington, DC. The meeting will begin at 8:00 a.m. on Wednesday, December 7 and 8:00 a.m. on Thursday, December 8, 1988. This will be the last meeting of the 1988 Commissioner's Advisory Group. The agenda will include the following topics:

Wednesday, December 7, 1988

Tax System Redesign (TSR) Initiatives/ State Coordination
Information Reporting
Penalties
Relationships with Practitioners

Thursday, December 8, 1988

Regulations Process
General Discussion.

Note.—Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

Because of limited time, three other topics are expected to be covered only through briefing papers. They are: Taxpayer Compliance Measurement Program (TCMP), Administrative Appeals Process, and Compliance Strategies. If time becomes available, some of these topics may be discussed at the meeting, although that is considered to be unlikely at this point.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner no later than November 30, 1988. Mr. Hilgen may be reach on (202) 566-4143 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, 1111 Constitution Avenue NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, (202) 566-4143 (Not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88-26747 Filed 11-17-88; 8:45 am]

BILLING CODE 4830-01-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);l (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: November 8, 1988.

By direction of the Administrator.

Frank E. Lalley, Director,

Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits
2. Application for Accrued Amounts of Veteran's Benefits Payable to Widow, Child or Dependent Parents
3. VA Form 21-614
4. The form is used by a dependent, who has not filed for death benefits, to file a claim fort accrued benefits available

at the time of the veteran's death. This form is required to determined the appropriate claimant or class of claimant eligible for accrued benefits
5. On occasion
6. Individuals or households
7. 10,200 responses
8. 5,100 hours
9. Not applicable.

Extension

1. Department of Veterans Benefits
2. Federal Fiduciary's Account
3. VA Form 27–4706b
4. The form is used by all Federal fiduciaries who are required to account to the VA for benefits paid to them on behalf of a beneficiary rated incompetent or under legal disability.
5. On occasion; Annually; Biennially; Triennially
6. Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
7. 6,700 responses.
8. 3,350 hours
9. Not applicable.

[FR Doc. 88–26690 Filed 11–17–88; 8:45 am]
BILLING CODE 8320–01–M

Veterans' Advisory Committee on Rehabilitation; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Veterans' Advisory Committee on Rehabilitation has been renewed for a two year period beginning November 3, 1988, through November 3, 1990.

Dated: November 3, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–26691 Filed 11–17–88; 8:45 am]
BILLING CODE 8320–01–M

Medical Care Reimbursement Rates for Fiscal Year 1989

AGENCY: Veterans Administration.

ACTION: Notice.

In accordance with provisions of OMB Circular A–11 section 13.5(a), revised reimbursement rates have been established by the Veterans Administration for inpatient and outpatient medical care furnished to beneficiaries of other Federal agencies during Fiscal Year 1989. These rates will be charged for such medical care provided at health care facilities under the direct jurisdiction of the Administrator on and after December 1, 1988.

Medical	$424
Surgery	$602
Spinal Cord Injury	$470
Blind Rehabilitation	$480
Neurology	$372
Rehabilitation Medicine	$327
General Psychiatry	$201
Intermediate Medicine	$163
Nursing Home Care	$139
Alcohol—Drug	$185
Prescription—Refill	$14
Outpatient [1]	$96
Dental Outpatient	$61

[1] Rate includes dialysis treatment.

Prescription refill charges in lieu of the outpatient visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. These charges apply if the patient receives the prescription refills in person or by mail.

When medical services for beneficiaries of other Federal agencies are obtained by the Veterans Administration from private sources, the charges to the other Federal agencies will be the actual amounts paid by the Veterans Administration for such medical services.

Inpatient charges to other Federal agencies will be at the current interagency per diem rate for the type of bed section or discrete treatment unit providing the care.

Dated: November 9, 1988.

Thomas K. Turnage,

Administrator.

[FR Doc. 88–26693 Filed 11–17–88; 8:45 am]
BILLING CODE 8320–01–M

Privacy Act of 1974; Amendment of System Notice

Notice is hereby given that the Veterans Administration (VA) is amending a system of records entitled, "Veterans Appellate Records System—VA" (44VA01). The current version appears on pages 785 and 786 of the **Federal Register** publication, "Privacy Act Issuances", 1986 Compilation, Volume V. The system is being amended to update the existing notice by including the Board of Veterans Appeals (BVA) computer tracking system of claims folders and brieffaces which is called "Veterans Appeals Control and Locator System" (VACOLS), the computer system used for indexing of BVA decisions, and a microfiche table which contains the veteran's file number. A brieffface is a folder which contains certain information about the pending BVA decision on its cover, and the contents of the brieffface contains a copy of any previous BVA decisions, a copy of the hearing transcript if one exists, and a copy of BVA correspondence.

The locator table is only available to BVA employees who must locate a claims folder for correction of the BVA decision or BVA index. The authorized employee uses this table to obtain the locator number (citation) of the redacted decision.

In the 1986 **Federal Register** notice, the appeal record card was identified. This has now been replaced by VACOLS. This computer tracking system of claims folders and brieffaces is retrievable by veteran's name or file number. The veteran's record on VACOLS is kept for two years after the BVA decision has been dispatched, except for the VACOLS history file which is kept indefinitely. VACOLS informs the authorized BVA employee of the appellant's full name and the veteran's file number, the regional office having original jurisdiction, representation, period(s) of service, record indicator, special handling, specific medical opinions, the present and past locations of the claims folder and brieffface, the data of the decision, the disposition, and the total number of issues. VACOLS also generates administrative reports used by the Board. Some of those reports are distributed to the service organizations but do not contain personal identifiers.

The "Index Card for Dangerous Persons" is being deleted from the system of records since the card is no longer in use and has not been for some years. In lieu of this card, a flash is placed in the brieffface and the claims folder. The correspondence file is also deleted from the system since this is not retrievable by personal identifiers but is solely retrievable by date of dispatch and is kept for a period of six months.

Appellate Index and Retrieval Staff (AIRS) also uses a computer system to index all BVA decisions in order to comply with the Freedom of Information Act, 5 U.S.C. 552. The veteran's file number is a data element and an authorized BVA employee can retrieve information by that number. One would only use this file number, a personal identifier, if the decision control number is incorrect, and then that control number would be corrected. Having the ability to retrieve the information by file number is used for editorial purposes and for reports. This system generates reports concerning BVA attorneys' and paralegals' productivity, and, consequently, it is used administratively.

AIRS also has a microfiche table which consists of three series of

numbers: The veteran's file number, decision control number, and the locator number. It is possible to use this table to locate a redacted decision by claim number. No one outside of the BVA uses this table.

The BVA is able to produce the BVA Decision Index and the AIRS Locator Table with the assistance of a contractor, Promisel & Korn, Inc., located in Bethesda, MD. The contractor maintains a backup copy of these two items and secures them under lock and key. Their building is also secured.

The affected sections include System Location, Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System, Storage, Safeguards, Retention and Disposal, and Records Access Procedures.

These changes are administrative in nature; therefore, no public comment is required.

Approved: November 9, 1988.

Thomas K. Turnage,

Administrator.

The system identified as 44VA01, "Veterans Appellate Records System—VA "The current version appears on pages 785 and 786 of the **Federal Register** publication, "Privacy Act Issuances", 1986 Compilation, Volume V, the system is amended by revising the entries shown below:

44VA01

SYSTEM NAME:

Veterans Appellate Records System.

SYSTEM LOCATION:

Board of Veterans Appeals, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC, 20420, and its contractor, Promisel & Korn, Inc., 4720 Montgomery Lane, Suite 900, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans, claimants and their representatives, Members of Congress, witnesses, Board members, staff attorneys, and staff paralegals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Appeal Decision Jacket, copy of Board of Veterans Appeals decision, verbatim recording of hearings, computerized claims folder and briefface locator tracking system, microfiche decision locator table, computerized decision index, and employee productivity information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 4001(a), 4003; 5 U.S.C. 552.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in filing folders, rotary index file, filing cabinets, microfiche, computer disc, and computer tape.

* * * * *

SAFEGUARDS:

Files are under custody of designated employees with access only to employees of Board of Veterans Appeals and its contractor who needs to know. Files kept by the contractor are in a locked safe in locked rooms in a secured building. Personal identifiers are removed within a week of receipt.

RETENTION AND DISPOSAL:

Records are retained in accordance with records retention standards approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules. Records are destroyed by shredding, burning, or by erasing the magnetic media. Automated storage media is retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

* * * * *

RECORD ACCESS PROCEDURES:

Information and/or assistance as to access to Board of Veterans Appeals records or as to contesting the content of such records may be obtained by contacting the Freedom of Information Act Officer (01C1), Board of Veterans Appeals, Veterans Administration, 810 Vermont Avenue, Washington, DC 20420, or by telephoning (202)233–3365.

* * * * *

FR Doc. 88–26694 Filed 11–17–88; 8:45 am]

BILING CODE 8320–01–M

VETERANS' ADMINISTRATION

Performance Review Board Members

AGENCY: Veterans' Administration.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Veterans' Administration's Performance Review Boards which was published in the **Federal Register** (52 FR 46146, dated December 4, 1987).

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: K. Joyce Edwards, Office of Personnel and Labor Relations (05A3), Veterans' Administration, 810 Vermont Avenue NW., WAshington, DC 20420, (202) 233–3423.

The VA's Performance Review Boards (PRBs) will be chaired by the following individuals:

Chairperson, VA PRB

Thomas E. Harvey, Deputy Administrator

Chairperson, Department of Medicine and Surgery PRB

Arthur J. Lewis, M.D., Deputy Chief Medical Director

Chairperson, Department of Veterans Benefits PRB

Harold F. Gracey, Executive Assistant to the Chief Benefits Director

Chairperson, Office of Inspector General PRB

James H. Curry, Assistant Inspector General for Audit Policy and Oversight, Department of Defense

The membership of the VA's four Performance Review Boards will be selected from the aforementioned Chairpersons and the following individuals:

Raymond H. Avent, Deputy Chief Benefits Director for Field Operations
Raymond S. Blunt, Director, Office of Program Analysis and Evaulation
James B. Durnil, Deputy Inspector General, Agency for International Development
Kenneth E. Eaton, Chairman, Board of Veterans Appeals
Wilfred L. Ebel, Chief Memorial Affairs Director
Sidney M. Ford, Regional Director, Midwestern Region
John A. Gronvall, M.D., Chief Medical Director
Gerald K. Hinch, Director, Office of Equal Opportunity
Conrad R. Hoffman, Director, Office of Budget and Finance (Controller)
Grady W. Horton, Deputy Chief Benefits Director for Program Management
Donald L. Ivers, General Counsel
Frank E. Lalley, Director, Office of Information Management and Statistics
Joan E. Lamb, Associate Deputy Administrator for Public Affairs
John J. Lee, Regional Director, Mid-Atlantic Region
Robert E. Lindsey, Jr., Regional Director, Western Region
Susan Livingstone, Associate Deputy Administrator for Logistics
Rhoda R. Mancher, Deputy Chief Benefits Director for ADP Systems Management
Gerald S. Martin, Administrator's Representative
Richard P. Miller, Regional Director, Southwestern Region
Renald P. Morani, Deputy Inspector General
Gerald E. Neumann, Director, Office of Facilities

Alonzo M. Poteet III, Associate Deputy Administrator for Congressional and Intergovernmental Affairs
Robert R. Rhyne, D.D.S., Assistant Chief Medical Director for Dentistry
Michael Rudd, Director, Office of Personnel and Labor Relations
H. Robert Saldivar, Director, Office of Acquisition and Materiel Management
Richard G. Thomas, Executive Assistant to the Chief Medical Director
Robert W. Schultz, Deputy Associate Deputy Administrator for Logistics
Donal B. Thompson, Regional Director, Southeastern Region
John Vogel, Chief Benefits Director
Albert B. Washko, Regional Director, Northeastern Region
Daniel H. Winship, M.D., Associate Deputy Chief Medical Director
Charles V. Yarbrough, Director, Management Support Office
Albert Zamberlan, Regional Director, Great Lakes Region.

Dated: November 9, 1988.

Thomas K. Turnage,

Administrator.

[FR Doc. 88-26692 Filed 11-17-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 223
Friday, November 18, 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 RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 23, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1989 Federal Reserve Board budget.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: November 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-26842 Filed 11-16-88; 3:40 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, November 23, 1988, following a recess at the conclusion of the open meeting.

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: November 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-26843 Filed 11-16-88; 3:40 pm]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of November 21, 1988.

A closed meeting will be held on Wednesday, November 23, 1988, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 23, 1988, at 10:00 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Amend administrative proceeding of an enforcement nature. Opinions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272-2300.

Jonathan G. Katz,

Secretary.

November 14, 1988.

[FR Doc. 88-26756 Filed 11-15-88; 4:27 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 223
Friday, November 18, 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

7 CFR PART 1c

DEPARTMENT OF ENERGY

10 CFR PART 745

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR PART 1230

DEPARTMENT OF COMMERCE

15 CFR PART 27

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR PART 1028

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR PART 225

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PART 60

DEPARTMENT OF JUSTICE

28 CFR PART 46

DEPARTMENT OF DEFENSE

32 CFR PART 219

DEPARTMENT OF EDUCATION

34 CFR PART 97

VETERANS ADMINISTRATION

38 CFR PART 16

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 26

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PART 46

NATIONAL SCIENCE FOUNDATION

45 CFR PART 690

DEPARTMENT OF TRANSPORTATION

49 CFR PART 11

Federal Policy for the Protection of Human Subjects

Correction

In proposed rule document 88-25552 beginning on page 45661 in the issue of Thursday, November 10, 1988, make the following corrections:

1. On page 45661, in the first column, in the heading to the document, the CFR citation for the Department of Agriculture and the title for the Veterans Administration should read as set forth above.

2. On the same page, in the second column, in the third line, "Veterans' " should read "Veterans".

3. On the same page, in the third column, in the first complete paragraph, in the 18th line, "Veterans' " should read "Veterans".

4. On page 45665, in the first column, in the second complete paragraph, in the seventh line, "accepted" was misspelled.

5. On the same page, in the second column, in the sixth line, "mischievous" was misspelled.

6. On page 45669, in the first column, below "**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY**", and above the CFR cite, add "Agency for International Development".

7. On page 45676, in the third column, in the first complete paragraph, in the first line, "reasonably" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80990-8227]

Shrimp Fishery of the Gulf of Mexico

Correction

In rule document 88-25917 beginning on page 45270 in the issue of Wednesday, November 9, 1988, make the following correction:

§ 658.22 [Corrected]

On page 45272, in the first column, in the last line, in § 658.22(b), "24˚46 7'N. latitude," should read "24˚46.7'N. latitude,".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS-82032A; FRL-3466-5]

EDTMPA and Its Salts; Submission of Notice of Manufacture or Import

Correction

In rule document 88-24396 beginning on page 41335 in the issue of Friday, October 21, 1988, make the following corrections:

1. On page 41336, in the first column, in the table, under "Chemical name", in the 2nd, 3rd, 4th, 5th, 7th, 9th, 11th, 13th, 14th, 16th, 17th, 19th, and 21st entries, in the first line of each entry, "ethanediby" should read "ethanediyl".

2. On the same page, in the same column, in the table, under "Chemical name", in the eighth entry, in the fourth line, "O''''']" should read "O''''']-".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-84027; FRL-3292-4]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

Correction

In rule document 87-26555 beginning on page 44826 in the issue of Friday, November 20, 1987, make the following correction:

§ 716.35 [Corrected]

On page 44828, in the third column, in the heading of § 716.35, "copies" should read "lists".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50 and 56

[Docket No. 87N-0032]

Protection of Human Subjects; Informed Consent; Standards for Institutional Review Boards for Clinical Investigations

Correction

In proposed rule document 88-25553 beginning on page 45678 in the issue of Thursday, November 10, 1988, make the following corrections:

1. On page 45679, in the second column, in paragraph 3., in the ninth line, "Departmen tof Agriculture" should read "Department of Agriculture"

2. On page 45680, in the first column, in the fourth complete paragraph, in the seventh line, "member ship" should read "membership".

BILLING CODE 1505-01-D

federal register

Friday
November 18, 1988

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 15

Requirements for Approval of Explosives and Sheathed Explosive Units; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 15

Requirements for Approval of Explosives and Sheathed Explosive Units

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final Rule.

SUMMARY: This rule revises the Mine Safety and Health Administration's (MSHA) existing regulations for approval of explosives and adds new requirements for approval of sheathed explosive units. The revisions upgrade existing provisions consistent with current technology, eliminate duplicative and unnecessary provisions, reorganize the existing requirements, and provide alternative methods of compliance where possible.

EFFECTIVE DATES: This final rule is effective January 17, 1989. However, those manufacturers proceeding under the provisions of the previous rule may file requests for approval or extension of approval of explosives under that rule until November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Room 613, Arlington, Virginia 22203, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

MSHA is revising the existing requirements for approval of explosives and adding new requirements for approval of sheathed explosive units. These revisions are issued pursuant to section 508 of the Federal Mine Safety and Health Act of 1977.

On July 9, 1982, MSHA published an Advance Notice of proposed Rulemaking (ANPRM) in the **Federal Register** (47 FR 30025) which announced a comprehensive review of the underground coal mining standards in 30 CFR Part 75 and solicited public comments. As part of the review, MSHA specifically sought comment on blasting and explosives standards and related approval regulations.

On June 5, 1984, MSHA published a notice in the **Federal Register** (49 FR 23281) which announced the availability of its preproposal draft of revisions to the approval requirements for explosives, sheathed explosive units, and related blasting equipment, and scheduled a public conference. The public conference was held July 11, 1984, in Pittsburgh, Pennsylvania and was well attended by representatives of the mining community. MSHA received written comments regarding its preproposal draft from affected manufacturers and other segments of the mining community.

After reviewing the comments received in response to the preproposal draft, MSHA published a proposed rule on November 12, 1986, in the **Federal Register** (51 FR 41046). The proposal set out revisions to the existing regulations for approval of explosives in Part 15 and added new requirements for approval of sheathed explosive units.

On March 26, 1987 (52 FR 9670), MSHA published a notice of public hearing which outlined the major issues raised during the comment period. A public hearing was held April 22, 1987 in Bruceton, Pennsylvania during which further comment on the proposal was received. A transcript of the proceeding was taken and made available for public inspection. Following the public hearings, interested persons were allowed to submit supplementary statements and data until the record closed on May 15, 1987.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and at the public hearing. Comments were received from all segments of the mining community including explosive manufacturers, trade associations and representatives of miners. This final rule was developed after a full evaluation of the entire public record.

The Agency's final rule addresses the comments received and is consistent with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

II. Discussion and Summary of the Final Rule

The use of explosive in underground coal mines and certain underground metal and nonmetal gassy mines continues to present a potentially serious risk of injuries and death to miners. One major hazard associated with the use of explosives is the accidental ignition of mine gases and coal dust.

The use of explosives approved as permissible reduce the potential for igniting flammable mixtures of methane gas or coal dust that may be present in areas where blasting is performed. The flames produced by the detonation of approved explosives are significantly shorter in duration and length than black blasting powder or nonapproved dynamites which were primarily used in blasting operations before approved explosives were required for use undergound.

MSHA's existing regulations governing the approval of explosives have not been revised since 1961. Since that time, technological advances have led to the development of new types of explosives suitable for use in underground mines. Analytical techniques used by the Bureau of Mines in testing and evaluating explosives for MSHA have advanced comparably. This final rule updates the existing regulations to reflect this state-of-the-art technology and deletes obsolete provisions.

The final rule establishes three subparts in this Part 15. Subpart A contains general approval procedures and requirements that are applicable to all subparts. Subpart B revises the technical requirements for the testing and evaluation of explosives and Subpart C establishes new technical requirements for the approval of sheathed explosive units or other units to be fired outside the confines of a borehole.

Subpart B contains a new gallery test which provides for evaluation of explosives under conditions that are more representative of actual conditions in underground mines. Other provisions revise the existing requirements for toxic gases that are produced by detonation of explosives and establish a new method for calculating the equivalent volume of various gases relative to carbon monoxide. This is based on the threshold limit values, time weighted average (TLV–TWA) included for these gases in the chemical substances section of the publication of the American Conference of Governmental Industrial Hygienists (ACGIH) entitled "TLV's, Threshold Limit Values and Biological Exposure Indices for 1988–1989 ('TLV Booklet')."

The provisions in Subpart C are new and establish requirements for the approval of sheathed explosive units or other units to be fired outside the confines of a borehole. The sheathed unit, intended for use without being confined in a borehole, is designed so that it will not ignite a flammable mixture of methane and/or coal dust when fired. It has been developed for use in dislodging loose roof slabs and overhangs, rockfall leveling, slab or boulder breaking and in other situations where the unconfined application of explosives is appropriate to improve mine conditions.

In the preamble to the proposed rule for Part 15, MSHA referenced its rulemaking on 30 CFR Part 7. There, the Agency proposed that for approval of

certain products the applicant or a third party selected by the applicant would conduct the required testing according to test procedures set forth by the Agency and require certification of test results by the applicant. MSHA specifically solicited comments as to whether the Agency should continue testing for approval of explosives and sheathed explosive units or if the testing under Part 15 might more appropriately be conducted by applicants or third parties and, therefore, included as a subpart under Part 7. The Agency was especially interested in information concerning the industry's capability with regard to facilities for conducting the required tests for approval of explosives and sheathed explosive units. In responding to this issue commenters stated that explosives and sheathed explosive units should not be included as products under Part 7. They believed that the concept of applicant or third-party testing would not be feasible in the explosives industry at this time since no manufacturer or third-party test facility had the capability to perform all the required tests. Therefore, as recommended by commenters, the final rule provides for continued Agency testing of products addressed by Part 15.

The final rule deletes existing § 15.24 concerning miscellaneous tests as those tests were used for research purposes and were not approval related. It also deletes the existing provisions in Part 15 which describe the blasting practices that must be followed in underground coal mines. These provisions are addressed in revisions to the safety standards in 30 CFR Part 75 which are being published simultaneously with this final rule.

The term "permissible" which is used in the existing standards was replaced in the proposal with the term "approved." Commenters objected to the change. They stated that the term "permissible" has been used for over 75 years and is well recognized throughout the mining industry. MSHA continues to believe that the terminology used to identify products which have been examined by the Agency to determine conformity with regulatory requirements must be standardized. The term which most appropriately reflects MSHA's action in this area is "approved." Therefore, the phrase "approved explosive" will be used in revised Part 15 in lieu of "permissible explosive." However, since explosives approved as permissible under the Part 15 regulations in effect prior to the effective date of this rule may continue to be manufactured and used in underground mines requiring approved explosives, the safety standard in Part 75 will define the term "permissible explosive" as one approved by MSHA. Further, a definition of "approval" consistent with the definition of this term in this part is added to Subpart N of Part 75.

Tests and evaluations made under this part will be performed for MSHA by the Bureau of Mines, U.S. Department of the Interior (Bureau). The Bureau testing facility is located near Pittsburgh, Pennsylvania.

III. Discussion of the Subparts

The following section-by-section analysis discusses each provision of the subparts of the final rule and addresses the comments received on the proposal.

Subpart A—General Provisions

Section 15.1 Purpose and effective dates.

This provision, derived from existing § 15.1, revises and simplifies the statement of purpose and more accurately reflects the scope of Part 15. It clarifies that the requirements set forth in the final rule are for approval of explosives and sheathed explosives units for use in underground coal mines and certain underground metal and nonmetal gassy mines. It also specifies the effective date applicable to the explosives and sheathed explosive units program. MSHA realizes that applicants need a phase-in or transition period when changing from previous to new revised approval regulations for products and two approaches for handling the transition were delineated in the proposal. The Agency proposed a delay of one year after publication of the final rule for the explosives approval requirements in Subpart B to take effect. However, Subpart A containing general provisions and Subpart C setting approval requirements for sheathed explosive units were to be effective 30 days after publication of the final rule so sheathed units could be made available for use in underground mines as quickly as possible. Alternatively, MSHA indicated it was considering making all subparts of the regulation, including the new revised explosives requirements in Subpart B, take effect 30 days after publication of the final rule. However, manufacturers with explosives applications in process could file requests for approval or extension of approval under the previous regulations until one year after the effective date of the new regulations. During this one-year phase-in period, applicants could submit an approval request for explosives under either the previous regulation or the new revised regulation.

The comments received on this question generally favored the second approach. Commenters stated that it provided manufacturers with greater flexibility since they could complete applications currently in process under the previous regulation while at the same time planning compliance with or even submitting applications under the new regulations immediately. In addition, they favored this approach since it followed the transition procedure set forth in MSHA's Part 7 regulations.

Consistent with the comments as well as with the approach taken on this issue in Part 7, the final rule provides that all subparts of the revised Part 15 regulation take effect 60 days after publication. It also provides that manufacturers proceeding under the provisions of the previous regulation may request approval or extension of approval of explosives under that regulation until one year from the effective date of the revisions. After the one-year period, all applications for approval or extension of approval of explosives or sheathed explosive units will be evaluated under the revised Part 15. The final rule also provides that explosives issued an approval under regulations in place prior to the effective date of these revisions, and in compliance with those regulations, could continue to be manufactured as long as no changes were made. Changes to previously approved explosives must be submitted as new approvals under the revisions to Part 15 set out in this final rule. This provision was added in response to commenters who sought clarification as to how the Agency intended to treat previously approved explosives manufactured in compliance with prior explosives approval regulations. With regard to the question of what standards would be used in auditing these explosives, MSHA will audit explosives based on the technical requirements upon which the approval was issued. Language reflecting this position is incorporated in § 15.10 Post-Approval Product Audit.

Section 15.2 Definitions

The following definitions apply to Part 15 approvals. They are designed to clarify the requirements of Part 15 and respond to the issues identified by commenters.

Applicant. This term, which is derived from the existing standards, identifies the party seeking approval of an explosive or sheathed explosive unit under this part.

Approval. This term replaces the existing phrase "certificate of approval."

It is used to describe a written document issued by MSHA which states that an explosive or explosive unit meets the requirements of this part and which authorizes the use of an approval marking identifying the explosive or explosive unit as approved as permissible.

Explosive. This definition revises the existing definition to more clearly indicate the type of products for which this part is intended. The existing definition's reference to "blasting devices as defined in Part 17 of this subchapter," has not been included in the final rule since these devices are no longer manufactured or used in underground mines.

Extension of approval. This phrase, which is new, is used to describe a written document issued by MSHA that states that a change to a previously approved explosive or sheathed explosive unit meets the requirements of this part. It is based on existing terminology that is used when changes are made on products approved in accordance with 30 CFR, Parts 18 through 36.

Minimum product firing temperature. This term is new and means the lowest product temperature at which an explosive is approved for use. It was not included in the proposal, but was added to the final rule in response to commenters who sought clarification as to whether firing temperature in the air-gap sensitivity test referred to product temperature or ambient temperature.

Post-approval product audit. This term is new and is used to describe MSHA's examination and testing, or both, of approved explosives or explosive units to determine whether those products meet the technical requirements and have been manufactured as approved. Some commenters stated that it was unclear what was meant by the phrase "to determine whether those products meet the requirements of the approval," used in the proposed definition for post-approval product audit. The final rule revises the proposed definition to clarify that the Agency will conduct such audits to determine whether the products meet the technical requirements in Part 15 and have been manufactured as approved.

Some commenters recommended that the term "audit" be replaced with the term "check." They stated that the word "audit" could be interpreted differently in the future and subject manufacturers to extensive audits. The Agency believes that the term "audit" more accurately describes the process that will be used to determine compliance with these requirements.

Sheath. This term, which is new, is used to describe that portion of a sheathed explosive unit which will be dispersed to form a flame inhibiting cloud upon firing of the explosives contained in the sheathed unit.

Sheathed explosive unit. This term is new and is used to describe an explosive device that can be fired without being confined in a borehole. It is designed so that it will not ignite a flammable mixture of methane or coal dust when fired.

Test detonator. This term has a new definition which identifies the types of detonators that will be used to test explosives submitted for approval under this part The existing definition which specifies that these detonators contain a base charge of 0.25±0.02 gram of pentaerythritol tetranitrate (PETN) is replaced since this strength detonator is no longer being manufactured for commercial use.

Several commenters recommended that a "test detonator" be defined as an "instantaneous electric detonator with a copper-alloy shell and iron or copper leg wires that is commercially available for use in underground coal mines." They further recommended that a test detonator contain "a base charge of 0.40–0.45 gram of pentaerythritol tetranitrate (PETN) pressed to a specific gravity of 1.4 g/cc and primed with standard weight of primer." These commenters stated that since test detonators are to be used for determining air-gap sensitivity of an explosive, it is imperative that detonators with a standard base charge be specified.

Detonators with a base charge of 0.40–0.45 gram PETN, which is a No. 8 strength detonator, is the minimum strength detonator currently being manufactured in the United States for underground gassy mines. Detonators that have an initiating strength equivalent to that of a detonator with a base charge of 0.40–0.45 gram PETN will be used by the Agency to conduct the appropriate tests under this final rule. Specialized systems using technology other than that identified in this rule will be addressed through the new technology provisions in §§ 15.20(i) and 15.30(g). The safe performance of approved explosives or shethed units can be significantly affected if the proper strength detonator is not used. Therefore, a provision has been added in § 15.7 on approval marking to require the labeling for explosives and sheathed units to state the test detonator strength used in the approval testing. This will assist operators in selecting the proper strength detonator to use with explosives and sheathed explosive units and will also assist approval holders by ensuring that the same strength detonator is used by MSHA for approval and audit testing.

During the course of rulemaking on Part 15, a commenter urged that MSHA develop approval regulations for detonators used in the initiation of approved explosives in underground mines. MSHA, after considering the need to establish approval requirements for detonators, will seek to include an approval schedule for detonators in its regulatory program.

The definitions in the existing regulations for "basic specifications," "poisonous gases," "ingredients," "Bureau," "MESA," and "MSHA" are not included in the final rule because they are commonly known throughout the mining community.

Section 15.3 Observers at tests and evaluations.

This standard is derived from existing § 15.9 and is intended to protect proprietary information which could be available to observers at tests and evaluations conducted under this part.

The final rule provides that only MSHA and Bureau of Mines personnel, representatives of the applicant, and such other persons agreed upon by MSHA and the applicant are permitted to be present during the tests and evaluations conducted under Part 15. In response to comments, § 15.3 specifies that "MSHA and Bureau of Mines personnel" instead of "government personnel" may be present during testing and evaluation. This change reflects MSHA's view that only necessary persons be present when the tests and evaluations are performed. This will minimize the possibility of any inadvertent release of proprietary information.

As was indicated in the proposal, existing § 15.8 which addresses consultation between a prospective applicant and personnel at MSHA's Approval and Certification Center has been deleted in the final rule. A commenter raised concerns as to whether MSHA intends to continue providing appropriate consultation services at no cost to the applicant. Manufacturers may consult with MSHA regarding the test procedures and requirements for explosives and sheathed explosive units prior to

submission of an application for approval under Part 15. However, once an application is received for action, costs will be charged pursuant to Part 5, including the time attributable to consultation.

Section 15.4 Application procedures and requirements.

This section, which is derived from existing §§ 15.3 and 15.15, sets forth the procedures and requirements for requesting approval of explosives or sheathed explosive units. It does not contain specific provisions concerning the fees to be charged for approval of explosives and sheathed explosive units. Instead, § 15.4(b) requires that fees calculated pursuant to Part 5, Fees for Testing, Evaluation, and Approval of Mining Products, (52 FR 17506) be submitted with each application for approval or extension of approval.

In a separate rulemaking, MSHA published a new Part 5 (Fees for Testing, Evaluation, and Approval of Mining Products) in the **Federal Register** on May 8, 1987 (52 FR 17506). That final rule revised the Agency's existing system of charging user fees for the testing, evaluation and approval of products manufactured for use in underground mines. Fees for MSHA processing of an application under Part 15 will be subject to an hourly rate charge for evaluation and flat rate charges for tests. On hourly rate actions, applicants will be billed for the fee when processing of the action is completed. The final fee will include, in addition to the hourly rate and flat test rate charges, actual travel and transportation expenses incurred when testing and evaluation requires the investigator to travel to the manufacturing or installation site. The Agency may consider converting to a flat fee schedule, payable with the application, after reviewing its hourly rate data.

MSHA will charge $33 per hour and an application fee of $100 for processing requests for approval or extension of approval for explosives under Subpart B and sheathed units under Subpart C. Flat rate fees for tests are shown in the table below. The test fees for explosives are revised from those listed in the final rule for Part 5 based on the revisions to the approval regulation. Test fees for sheathed units are new rates developed to recover costs of processing and testing. The fee schedule published in May 1987 will apply to applications for approval or extension of approval filed under the previous Part 15 regulations.

Part 15—Fees For Approval of Explosives and Sheathed Explosive Units

APPROVAL OF EXPLOSIVES

Test	Fee
Weigh-in	$420
Physical examination	295
Chemical analysis	1,797
Air Gap: Minimum product firing temperature	418
Air Gap: Room temperature	320
Pendulum friction	148
Detonation rate	320
Gallery Test 7	4,917
Gallery Test 8	3,537
Toxic gases (large chamber)	732

APPROVAL OF SHEATHED EXPLOSIVE UNITS

Test	Fee
Physical examination	$128
Chemical analysis	1,044
Gallery Test 9	1,944
Gallery Test 10	1,944
Gallery Test 11	1,944
Gallery Test 12	1,944
Drop Test	648
Temperature Effects/Detonation	672
Toxic Gases	580

The final rule organizes the application procedures into the three kinds of approval actions an applicant may request under Part 15: an original approval, a subsequent approval of a similar product, and extension of approval. In requesting an original (first time) approval for an explosive or sheathed explosive unit, MSHA will require the submission of all information necessary to evaluate all facets of the explosive or sheathed explosive unit as it relates to the approval requirements. If, after receipt of an original approval, the applicant requests subsequent approval of similar product or an extension of approval for the original product, the applicant will not be required to submit documentation duplicative of previously submitted information. Only information related to changes in the previously approved product will be required, avoiding unnecessary paperwork.

The final rule retains the existing requirement that changes in the specifications of a previously approved explosive or sheathed explosive unit must be approved by MSHA. This will avoid changes being made that could affect the safe performance of the explosive or sheathed explosive unit.

Section 15.4(c) (2) of the final rule requires applicants requesting approval of explosives to include "a laboratory number or other suitable designation identifying the explosive" at the time of application with the brand or trade name provided prior to issuance of approval. This constitutes a change from the proposal which required applicants to submit, at the time of application, the brand or trade name under which the explosive would be marketed if approved. Several commenters objected, however, pointing out that applicants frequently submit several explosive candidates for testing and do not determine the brand or trade name of the candidates until completion of the approval tests. Thus, applicants are no longer required to submit the brand or trade name at the time an application is submitted, but instead can provide it later. However, an approval will not be issued until the brand or trade name has been received by MSHA.

The final rule revises the existing requirement concerning assignment of different brand or trade names for approved explosives which specifies that, when a change in chemical composition is approved, the former composition shall not be used again unless reapproved by MSHA. Under § 15.4(f)(3) MSHA may require that a new or changed explosive or sheathed explosive unit be distinguishable from those associated with the former composition. This change recognizes that methods, other than different brand or trade names, could be used to identify products which perform differently and is based on MSHA's view that reapproval of an explosive or sheathed explosive unit, which otherwise performs safely, is not necessary because of a name change.

The existing requirement that the strength of the exposive be determined by the ballistic mortar test has been deleted in the final rule. MSHA has determined that it is not essential to know the strength of the explosive to determine whether the explosive will perform safely. In addition, of the numerous field samples of approved explosives that have been tested over the last ten years, all were found to be in compliance with the strength requirements. This was true even when the field samples were not in compliance with other specifications of the approval.

Section 15.5 Test samples.

The final rule reviews and updates the provisions of existing §§ 15.5 and 15.6 concerning the shipment, quantity, and quality of explosives and sheathed explosive units to be submitted for testing. The final rule retains, with clarifying changes, provisions from the existing regulations that prohibit

shipment of samples until notification from MSHA, require storage of samples in a magazine for at least 30 days prior to testing and, establish when test samples not be tested because of their chemical composition or condition. New provisions have been added specifying that explosives will not be tested that use aluminum clips to seal explosive cartridges, contain any combination or perchlorate and aluminum, contain more than 5 percent perchlorate, or contain any perchlorate and less than 5 percent water.

Section 15.5(a) requires the applicant, upon request by MSHA, to submit samples of explosives and sheathed explosive units for testing and evaluation by MSHA. The section also sets forth the quantities of these products to be submitted.

Under § 15.5(a)(2), the applicant is required to submit 70 pounds of 1-¼-inch diameter explosives and additional cartridges according to a formula based on cartridge length. This formula constitutes a change from the proposal which increased the existing requirement of explosives to be submitted for testing from 100 to 150 pounds. Use of the formula method will provide a more accurate number of explosives needed for testing, while at the same time providing the increased quantity of explosives necessary to conduct the new minimum product firing temperature tests included in the final rule. Section 15.5(a)(3) also uses a formula to specify the number of cartridges in diameters less than 1-¼ inches that must be submitted for testing.

The existing requirement that applicants submit explosive cartridges in 8-inch lengths has been deleted in the final rule. This will allow applicants the flexibility to submit samples that are representative of the cartridge lengths to be manufactured.

Under § 15.5(b), MSHA will not test explosives or sheathed explosive units that: (1) Contain chlorites, chlorates, or substances that react over an extended period and cause degradation of the explosive or sheathed unit; (2) are chemically unstable; (3) show leakage; (4) use aluminum clips to seal the cartridge; (5) contain any combination of perchlorate and aluminum; (6) contain more than 5 percent perchlorate; or (7) contain any perchlorate and less than 5 percent water.

One commenter suggested that explosive cartridges with aluminum clips be permitted, stating that the hazard of incendivity associated with aluminum clips is not sufficient to warrant their exclusion. It is generally recognized by the mining community, however, that aluminum can present an incendivity hazard, particularly when contacting rusty metal, and should not be used in areas where there is a possibility of igniting methane or coal dust. Therefore, the final rule continues to prohibit testing of explosive cartridges with aluminum clips.

The final rule retains the provision specifying that MSHA will not test an explosive containing more than 5 percent perchlorate. Perchlorate is an ester or salt of perchloric acid which is used in explosives to enhance sensitivity, primarily to improve the low temperature performance of approved explosives. Several commenters objected to this provision stating that it was unduly designed restrictive. They further stated that MSHA should consider approval of explosives that contain more than 5 percent perchlorate providing that the manufacturer can show that such explosives are chemically stable, do not degrade or react over an extended time in storage and meet all the requirements for sensitivity and performance. In addition, one commenter indicated that it had products containing up to 10 percent perchlorate which had good safety stability histories. These products had been DOT classified which included impact and thermal stability testing.

As indicated in the proposal, research conducted by the Bureau of Mines shows that the use of perchlorate in approved explosives does not result in instability of the explosive when the amount of perchlorate does not exceed 5 percent and the explosive contains 5 percent or more of water. However, at that time, neither the Bureau of Mines nor MSHA was aware of any data or information on whether explosives with more than 5 percent perchlorate could be used safely and therefore, specifically requested that information or data be provided on the issue. Although commenters generally objected to the prohibition, sufficient data or information was not received to allow MSHA to establish appropriate tests or criteria for evaluating such explosives. As a result, the final rule retains the prohibition against testing of explosives with more than 5 percent perchlorate.

However, explosives with more than 5 percent perchlorate may be evaluated under the new technology provision in § 15.20(i) of the final rule. Under this provision, consideration would be given to evaluating those products under United Nations Test Series 3 which includes an impact test for sensitivity The Agency is also considering the need to store these explosives for an extended period prior to performing tests to determine whether the chemical stability has been affected by the increased proportion of perchlorate and whether the explosive will degrade or react over an extended time. MSHA will expect manufacturers requesting approval of explosives with more than 5 percent perchlocate under § 15.20(i) to address these issues through suggested test criteria and procedures.

Once MSHA approves and explosive with more than 5 percent perchlorate under the new technology provision, the Agency will make the modified tests and requirements used by MSHA to evaluate such explosive available to manufacturers and other interested persons. If over a period of time MSHA receives a number of applications for explosives with more than 5 percent perchlorate, MSHA will revise the explosive approval regulations in Part 15 through the rulemaking process to allow such explosives.

Commenters also raised questions concerning the prohibition of any combination of perchlorate and aluminum in explosives, finding this provision was also design restrictive. Further, one manufacturer stated that it had produced explosives containing aluminum and perchlorate with good safety stability histories. In combining perchlorate and aluminum in explosives, the perchlorate is an oxidizer and the aluminum is a highly efficient fuel source which also acts as the sensitizer. The perchlorate can be sensitive to friction that may result from impact in handling, and in the presence of aluminum for fuel, the resistance to explosion may not provide the assurance of safety necessary to gassy underground mines. Accordingly, the final rule retains the prohibition against testing of explosives composed of a combination of perchlorate and aluminum. However, as with explosives containing more than 5 percent perchlorate, MSHA will evaluate explosives incorporating a combination of perchlorate and aluminum under the new technology provision in § 15.20(i).

Section 15.5(c) requires explosives and sheathed explosives units to be stored prior to testing. It retains the existing requirement for storage in a magazine for at least 30 days before gallery tests are conducted. This storage period is designed to provide an indication of explosive or explosive unit stability so MSHA can determine whether the character of the product has cnanged.

Section 15.6 Issuance of approval.

This section is derived from existing § 15.13 and specifies the actions to be

taken by MSHA upon review of applications for approval of explosives and sheathed explosive units. The final rule provides that MSHA will issue an approval or a notice denying approval after tests and evaluations have been completed. The approval or notice denying approval will be in writing.

The proposed rule deleted the existing requirement that applicants be provided a written report summarizing the results of the investigation of the application. Commenters objected to this deletion, stating that the report provided useful information to manufacturers concerning their products. This report, however, has proved most useful to applicants when approval of an explosive application was denied by MSHA as it set forth the rationale for denial. MSHAS believes that manufacturers should be given the reasons for denial of an approval. Therefore, paragraph (a) of the final rule provides, in lieu of an investigative report, that a notice denying approval must specify the reasons for MSHA's action.

Several commenters also suggested that MSHA be required to complete all approval actions within 90 days. Another commenter strongly disagreed, stating that an approval deadline would only serve to cause shortcuts in testing procedures and could result in products being approved for us in gassy underground mines that do not meet the technical requirements.

The final rule does not established a time limit for the completion of final actions on requests for approval of explosives and sheathed explosive units due to the complexity and variables involved in the approval process. Variables such as the number of applications received for approval are beyond the control of MSHA. An approval deadline is especially inappropriate given that the final rule allows approval of explosives or sheathed units that incorporate new technology or new applications of existing technology as established in §§ 15.20(i) and 15.30(g). Concerning the timing of the approval process, the Agency is aware that excessive delay could have an adverse affect on the quality and integrity of the product being tested. MSHA has eliminated the performance of nonapproval-related tests and has simplified reports on approval actions to reduce processing time. The total time for processing of approval actions for explosives was decreased by 18 percent in fiscal year 1988 from the previous year. Streamlining internal approval procedures will continue to be an MSHA priority.

Section 15.6(b) prohibits applicants for approval from advertising or otherwise representing an explosive or sheathed explosive unit as approved until MSHA has issued an approval. This provision, which is new, is consistent with similar prohibitions applicable to applicants for approval under other MSHA approval regulations such as 30 CFR Part 18.

Section 15.7 Approval marking.

This section is derived from existing § 15.14 and provides for labeling of approved explosives and sheathed explosive units. The final rule retains existing requirements that approved explosives be marketed only under the brand or trade name specified in the approval and that the wrapper of each cartridge as well as each case of explosives bear a label indicating that the explosive is approved. These requirements also apply to sheathed explosive units. Added to the approval marking provision in the final rule is the requirement that the explosive and sheathed unit contain the test detonator strength used in the approval testing, and the minimum product firing temperature.

The final rule requires that the wrapper of each cartridge and each case of approved explosives and the outer covering of each sheathed explosive unit and each case of approved sheathed explosive units be labeled with the minimum product firing temperature. The preproposal draft would have required each case of approved explosives and sheathed explosive units to be labeled with the minimum firing temperature. The proposal retained the performance requirement for a mimimum firing temperature but the manner of conveying this information was to be determined by explosive manufacturers. As discussed and specified in the new regulations for Part 75, Safety Standards for Explosives and Blasting, explosives or sheathed explosive units must not be fired when the product is below the minimum product firing temperature. One commenter said that explosives labeled with the minimum firing temperature could cause users to confuse outside air temperature with the temperature of the product. The Agency has clarified this issue by defining the minimum firing temperature as the lowest product temperature at which the explosive or sheathed explosive unit is approved for use. The commenter also stated that the labeling requirement would be more effectively accomplished through inserting detailed instructions in each case of explosives as to storage and use which is current practice and through user education and training. However, the Agency has eliminated the case insert in the final rule and does not believe that the case insert served to effectively provide guidance to the blaster. MSHA accident data shows failure by the blaster to follow safe blasting practices or regulations to be a contributing factor in over 80 percent of the fatal blasting accidents from 1978 through 1984. Upon further consideration of this information, MSHA has determined that blasters require more specific guidance in the safe handling and use of explosives.

The labeling of each explosive cartridge and sheathed unit with the minimum product firing temperature readily provides the blaster with the information on-site without having to read through a case insert which is very difficult to accomplish in the underground mining environment. The inclusion of this provision in the final rule transmits information necessary for user compliance with the explosives and blasting standards in Part 75. Accordingly, explosives and sheathed unit approval labels must provide the minimum firing temperature for the product.

The approval label must also provide the test detonator strength used in the approval testing of the explosive or sheathed unit. The safe performance of approved explosives or sheathed units can be significantly affected if the proper strength detonator is not used when blasting. Section 1310(e) of Part 75 requires that detonators have sufficient strength to initiate the explosives being used. The inclusion of the test detonator strength on the approval label will assist blasters in selecting the proper strength detonator to use with explosives and sheathed units and thus provide important information for user compliance with blasting safety standards. Moreover, it will ensure that the same strength detonator is used for post-approval audit testing as that used during the initial approval testing.

As noted above, the existing requirements for a case insert, warning the user that the explosive is approved only when used in conformance with the requirements of Part 15, is not included in the final rule. Requirements governing the use of explosives are appropriately included in related safety standards and should not be addressed in requirements for approval of explosives.

Section 15.8 Quality assurance.

This section is derived from existing § 15.14, except paragraph (b) which is new. The MSHA approval label is relied

upon in the mining community as an indication that the product is safe for use in mines. Under the final rule, the approval-holder is required to manufacture the product in accordance with the specifications of the approval and report to MSHA any knowledge of explosives or sheathed explosive units distributed that do not comply with the approval.

One commenter objected to the proposal's deletion of a provision requiring applicants to submit detailed quality control plans and quality control inspection and testing instructions for acceptance by MSHA. Any changes to them would also have been subject to MSHA acceptance. MSHA continues to believe that there is a need for quality control in the production of approved explosive products. For this reason, the final rule retains the basic requirement that approved explosives and sheathed explosive units be manufactured in accordance with the approval. The design and implementation of a quality assurance program to accomplish this, however, is the manufacturer's responsibility and, therefore, has not been made subject to review or acceptance by MSHA.

Adherence to the final rule's requirements for quality assurance will provide substantial protection against the distribution of defective explosive products. However, MSHA recognizes that this can occur. In such an event, § 15.8(b) requires the approval-holder to report immediately to the Agency any knowledge that explosives or sheathed explosive units have been distributed which do not meet the requirements upon which the approval is based. This knowledge could come from the results of audits conducted by the approval-holder, reports from users, or other sources. Upon receiving such a report, MSHA will work with the approval-holder to implement appropriate corrective action.

Commenters requested that MSHA provide guidance on how approval-holders would comply with the requirement to report knowledge of distributed explosives or sheathed explosive units which did not meet the technical requirements. Since such explosive products can create a hazard, immediate notification should be by expeditious means, such as by telephone. The notification should include a description of the nature and extent of the problem, the locations where the explosives or sheathed explosive units have been distributed, and the approval-holder's plans for corrective action. Corrective action may include recalling the explosive products or restricting use of them pending conformance with the approval specifications. MSHA will review all of the information provided, including the approval-holder's program of corrective action. If the program is inadequate, MSHA will work with the manufacturer to develop a more appropriate program. If appropriate corrective action cannot be agreed upon by the approval-holder and MSHA, the Agency may seek revocation of the approval, or other action as necessary.

Section 15.9 Disclosure of information.

This section is derived from existing §§ 5.9 and 15.17 which address the disclosure of information on explosives tested and evaluated under Part 15. MSHA intends to continue the current practice of treating information on product specifications and performance as proprietary information and will protect its disclosure to the fullest extent consistent with The Freedom of Information Act, F.O.I.A. (5 U.S.C. 552). Under the final rule, MSHA will notify the applicant of requests for product information received by the Agency and will provide the manufacturer the opportunity to present its position on disclosure. Information identified by the manufacturer as proprietary will not be disclosed, unless, as provided by F.O.I.A., MSHA determines that disclosure will further the public interest and will not impede the discharge of any of the functions of the Agency. No objections were raised by commenters to this provision.

Provisions from the existing regulation concerning MSHA publication of lists and other information on approved explosives are not included in the final rule. The dissemination of information that is nonconfidential need not be addressed by these regulations. However, MSHA intends to continue to provide the mining community with this information.

Section 15.10 Post-approval product audit.

This section is derived from existing § 15.20 and from provisions on post-approval product audit contained in the Agency's approval rulemaking in 30 CFR Part 7. As was indicated in the preamble to proposed Part 15, it maintains a consistent approach on the issue of product audits with that outlined in Part 7.

The final rule provides that approved explosives and sheathed explosive units be subject to periodic audit by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based. This aspect of the final rule, by providing a mechanism for independent evaluation by MSHA of approved products on a random basis, complements the quality assurance provision that requires approval-holders to manufacture their explosive products as approved. Moreover, it is consistent with recommendations from internal reviews of MSHA's approval program.

Approved explosives or sheathed units audited by MSHA will be selected by the Agency as representative of those distributed for use in mines. When an approved explosives product is requested by MSHA for audit from the approval-holder, the Agency will examine and evaluate it and conduct any testing necessary at the Bureau of Mines testing facility. This reflects a change from the proposal which allowed for the audit to occur at a "mutually agreeable site" since manufacturers indicated that they do not have adequate facilities for testing explosives and sheathed units. Approval-holders, however, will be notified by MSHA of the time for any audit-related testing of approved explosives or sheathed explosive units to allow them an opportunity to witness such tests.

In determining which approved explosives or sheathed explosive units will be subject to audit at any particular time, MSHA will consider a variety of factors such as whether the manufacturer has previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations may include product complexity, the manufacturer's previous product audit results, product population in the mining community, and the time since the last audit or since the product was first approved.

Several commenters expressed concern over the proposal's requirement that explosives and sheathed explosive units selected from the field for auditing meet the same technical requirements as required for approval. This is a change from existing regulations which test field samples under less stringent criteria and allows for some field degradation such as in air gap sensitivity. It is important for explosive products available for use in underground gassy mine atmospheres to, at all times, be in compliance with the technical requirements on which approval is based without regard to the age of the product or the length of time the explosive or sheathed unit has been stored in the field. This is consistent with the approach taken in all of MSHA's other approval programs where

audited products, including consumable items such as flame-resistant hydraulic fluid, must meet all the technical requirements upon which approval was granted. Commenters have presented no evidence during rulemaking to show that this is technically infeasible. If manufacturers believe that their products degrade sufficiently over time so they cannot continue to meet the technical requirements then they should provide a shelf or storage life for explosives or sheathed units. MSHA will consider explosives with expired shelf dates to be deteriorated and therefore required to be removed by mine operators in accordance with § 75.1328.

Under the final rule, approved products can be obtained for audit from the approval-holder or from sources other than the manufacturer such as mine suppliers or distributors. The approval-holder may, however, only be required to provide one case of explosives or 25 sheathed explosives once a year, at no cost to MSHA, except for cause. MSHA can obtain products for audit from the approval-holder or other sources such as mine suppliers or distributors at any time at MSHA expense.

Based on MSHA's experience, the Agency anticipates few instances in which more than this quantity of approved explosives or sheathed units will be required "for cause" from any one manufacturer in any one year. There are circumstances, however under which an additional audit is appropriate to ascertain compliance with the technical requirements upon which an approval was based. Examples of such circumstances include verified complaints about the safety of an approved product, evidence of product changes that have not been approved, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval-holder. Under these circumstances, the approval-holder must provide, at no cost to MSHA, additional approved explosives or sheathed units so the Agency can ensure that the approval-holder is meeting the obligation to manufacture them as approved.

Several commenters indicated that shipping small quantities of explosives would impose unreasonable costs on manufacturers because most major carriers base their tariffs on a 7,500- or 10,000-pound minimum for shipment of Class A explosives. When shipment of explosives or sheathed explosive units is necessary for audit, MSHA believes that most approval-holders will ship them in the same vehicles as other shipments of explosives to customers, their regional supply magazines, or to the Bureau of Mines.

When discrepancies are found during MSHA audits of approved products, MSHA will require that the manufacturer take all necessary corrective actions. These actions could include, but are not limited to, the approval-holder recalling the lot or batch of explosives or sheathed units or issuing users notices. Revocation of the approval by MSHA may result when discrepancies in approved products are not successfully corrected.

A new paragraph (d) has been added to § 15.10 of the final rule to address commenters' questions regarding the auditing of previously approved explosives. It provides that explosives approved under regulations in effect prior to the effective date of this rule shall conform to the provisions on field samples set forth in those regulations (See 30 CFR Part 15, 1987 Edition).

Section 15.11 Revocation.

This section is derived from existing § 15.16 and from the provision on revocation in 30 CFR Part 7. It is indentical to the revocation section in Part 7 as MSHA believes that all approval-holders must be accorded the same rights and subject to the same process regardless of the approval regulations under which the approval was granted.

The final rule provides that MSHA may revoke an approval granted under Part 15 whenever an explosive or sheathed explosive unit fails to meet the applicable technical requirements specified in Subpart B or C or creates a hazard when used in a mine. Commenters recommended that the revocation procedures require MSHA to fully describe the cause or reason for a revocation action, and that the procedures include an appeal process for the approval-holder to challenge the basis for such action. The Agency recognizes that an MSHA approval is important to the marketability of a product used in the mining industry. For this reason it has been MSHA's practice to treat approval-holders as "licensees" under the Administrative Procedure Act (APA). Consistent with this practice, the final rule provides that approval-holders be accorded certain protections prior to revocation of an approval. These include being provided with (1) A written notice of the Agency's intent to revoke a product approval, with an explanation of the reasons for the proposed revocation, (2) an opportunity to demonstrate or achieve compliance with the technical requirements for approval, and (3) an opportunity for a hearing upon request.

Also in accord with the APA is the final rule provision which permits MSHA to suspend an approval, without prior notification to the approval-holder, if a product poses an imminent hazard to the safety or health of miners. Under such circumstances, an approval may be suspended immediately to protect the safety and health of any affected miners. Upon suspension of an approval, the product involved is no longer approved and MSHA will require mine operators to withdraw the product from use during the course of any suspension. MSHA will also immediately advise approval-holders of any suspension so effective corrective action can be started as soon as possible.

Subpart B—Explosives

Section 15.20 Technical requirements.

This section is derived from existing §§ 15.10, 15.11, 15.12 and 15.21, except for paragraphs (g)(1), and (g)(2), which are new. Section 15.20 of the final rule sets forth the technical requirements for approval of explosives.

Paragraph (a) requires the chemical composition of the explosive, as determined by MSHA analysis, to conform to the composition furnished by the applicant. If in conformance, the applicant's composition description is incorporated into the approval and is the standard to determine compliance with the approval during MSHA audits.

One commenter questioned why two sets of tolerances were necessary and suggested that the chemical composition of explosives be required to meet only the tolerances specified in § 15.21. The tolerances set in § 15.21 represent a baseline standard of variation which all explosives submitted for approval must meet, regardless of their chemical composition. However, the particular mixture of ingredients in an explosive may require tighter tolerances for the explosive to perform safely and for the purpose designed. Based on its data and knowledge of the technical functioning of the explosive involved, the manufacturer is in the best position to provide these mixture-specific tolerances. Therefore, the final rule requires that the chemical composition of an explosive meet the tolerances furnished by the applicant in addition to the tolerances specified in § 15.21.

Paragraph (b) requires the explosive to detonate completely in the rate-of-detonation test. This test is intended to determine whether the explosive has a tendency to misfire or partially detonate. The test is conducted on a 50-

inch column of 1¼ inch diameter cartridges and on the same quantity of the smallest diameter cartridge less than 1¼ inch submitted by the applicant.

Under the proposal the rate-of-detonation test was to be conducted using a test detonator without a booster to initiate all explosives submitted for approval. The proposed rule eliminated the use of a booster in addition to a test detonator to initiate gelatinous explosives because boosters were not used in the mine environment. However, commenters stated that the use of boosters with gelatinous explosives yields more reproducible results in laboratory testing with regard to detonation velocity and recommended their continued use. Accordingly, the rate-of-detonation test has been modified in the final rule to specify the use of a 60-gram tetryl pellet booster for testing of gelatinous explosives.

Some commenters also suggested that the rate-of-detonation test be performed at the minimum firing temperature of the explosive since explosives tested at temperatures below this level could result in incomplete detonation or erratic rate of detonation. The effect of temperature on explosives is better evaluated under the air-gap sensitivity requirements in § 15.20(c) than in subparagraph (b) on rate of detonation. The air-gap test provides a more stringent measure of the explosive's ability to detonate as it is designed to ensure that a product, at its minimum firing temperature, will propagate the gap or space between explosive cartridges. This is in contrast to the rate-of-detonation test where cartridges are next to each other in a column. Therefore, the final rule continues to provide that the rate-of-detonation test be conducted at an ambient temperature between 68 and 86 °F.

Paragraph (c) requires that the air-gap sensitivity of the explosives be at least 2 inches at the minimum firing temperature and at least 3 inches at a temperature between 68 and 86 °F. This requirement enables MSHA to evaluate whether the explosive will transmit detonation across a small air gap to another explosive cartridge in the column. The air-gap sensitivity is determined in the explosion-by-influence test using the 7-inch cartridge method. The 7-inch cartridge method is conducted with two 8-inch cartridges. One inch is cut off the end of each cartridge. The cartridges are placed in a paper tube, the cut ends facing each other with the appropriate 2-inch or 3-inch air gap between them. Then, one cartridge is fired to test the effect of the detonation on the other. This test method represents a modification of the existing halved-cartridge method.

A comment from one manufacturer suggested retaining the existing halved-cartridge method of conducting the explosion-by-influence test rather than using the 7-inch cartridge method. MSHA proposed changing to the 7-inch method because use of a nearly whole cartridge better simulates actual conditions that may occur in the mining environment. This was not disputed by the comments and thus, the explosion-by-influence test in the final rule will be performed using the 7-inch cartridge method.

Recommendations were also received from commenters to specify the paper tube used in the test: The weight and type of paper; the length and width of the sheet of paper; and the number of wraps of paper. This additional specification, they stated, would help ensure that tests are conducted uniformly. MSHA disagrees that variations in the paper tube specifications could significantly affect the repeatability of tests and therefore has not included such detailed specifications in the final rule.

The final rule, like the proposal, recognizes different sensitivities in the air-gap test at different temperatures. Under § 15.20(c) an air-gap sensitivity of 2 inches is required at the minimum product firing temperature and 3 inches required at temperatures of 68 to 85 °F. This is consistent with existing §§ 15.12 and 15.21, which require an air-gap sensitivity of 3 inches in the initial approval test, but allows an air-gap sensitivity of 2 inches for field samples of approved explosives. Several commenters recommended specifying a 2-inch air gap at a temperature between 68 and 86 °F to be used in any post-approval product audit of explosives. As was explained in the earlier preamble discussion on this issue in § 15.10 Post Approval Product Audit, it is important for explosives available for use in gassy underground mines to, at all times, be in compliance with the technical requirements on which approval is based regardless of the age of the product or the length of time the explosives or sheathed unit has been stored in the field. As a result, the final rule requires products audited under § 15.10 to meet the same 3 and 2-inch air-gap sensitivity as is required for the original approval testing.

The minimum product firing temperature at which the air-gap sensitivity will be conducted is either that proposed by the applicant or 41 °F, whichever is lower. Thus, under the final rule, explosives will be required to perform adequately at a temperature as low as 41 °F. If specified by the applicant, the explosives will be tested at a lower temperature. The lowest temperature at which the explosive passes the test will be specified in the approval.

A further comment recommended exempting unit charges or cartridges from the air-gap sensitivity requirement in § 15.20(c). Unit charges or cartridges would be a package configuration designed to require that only one cartridge or continuous charge be loaded in a borehole. With only one cartridge or continuous charge in a borehole, the air-gap sensitivity, cartridge to cartridge would not be a factor in performance. Such unit charges or cartridges could still be used with single cartridges which may present the potential for an air gap to exist when loaded into a borehole. This could also occur with a continuous cartridge depending on its length.

Paragraph (d) specifies the performance required for an explosive in gallery test 7. The test demonstrates whether the explosive will ignite an explosive mixture of methane and air. Gallery test 7 is conducted by firing, one at a time from the borehole of a steel cannon, at least 20 explosive charges of varying weights. The explosives are primed with a test detonator and stemmed and tamped. This test is conducted in air containing 7.7 to 8.3 percent natural gas and at a temperature between 68 and 86 °F.

A commenter suggested that gallery test 7 and other gallery tests be performed on samples of explosives identical to those intended to be marketed for use in underground mines. MSHA agrees and has addressed this concern by specifying that gallery test 7 be conducted on explosives that include wrappers and seals.

The test procedure in both gallery tests 7 and 8 calls for tamping of the explosive prior to firing. Commenters generally objected to the tamping, noting that tamping is not permitted in the mines. In addition, they indicated that tamping can affect the rheology and sensitivity of explosives and suggested two alternatives for revising § 15.20 (d) and (e). One option was to provide larger diameter samples for testing and eliminate tamping altogether. The other alternative was to continue tamping, but permit the applicant to provide larger diameter cartridges for testing explosives where the rheology or sensitivity of the explosive could be adversely affected by tamping. While mine operators are prohibited from tamping the explosives, they need to

tamp the stemming to fill the cross-section of the borehole as required by the Part 75 explosives safety standards. Such tamping of the stemming material has the potential of putting pressure on the column of explosives. Also, Bureau of Mines research shows that crushing explosive cartridges to fill a borehole increases the risk for ignition of methane during blasting as compared to loading cartridges in a continuous train without crushing. The tamping of explosives in the gallery tests provides a factor of safety based on experimental studies. Accordingly, the gallery test has been designed to take this into account and provide the necessary measure of safety should this situation occur.

Paragraph (e) specifies the performance required for an explosive in gallery test 8. The test demonstrates whether the explosive will ignite an explosive mixture of methane and air in which bituminous coal dust has been predispersed. The test is conducted by firing, one at a time from the borehole of a steel cannon, at least 10 unstemmed explosive charges of varying weights. The explosives are primed with a test detonator and tamped. This test is conducted in 640 cubic feet of air containing 3.8 to 4.2 percent natural gas, into which 8 pounds of bituminous coal dust has been predispersed. The air is at a temperature between 68 and 86 °F.

Gallery test 8 in the final rule replaced existing gallery test 4, which provides for coal dust to be placed on shelves in the gallery, rather than being predispersed. The new test conditions facilitate improved quantitative comparisons of explosive incendivity. The test is also designed to better simulate conditions in the mining environment.

Paragraph (f) establishes the requirements for the performance of an explosive in the pendulum-friction test. The test demonstrates whether the explosive is unduly sensitive to impact and friction. The explosive is required to show "no perceptible reaction" under the conditions of the test. "No perceptible reaction", as used in the final rule, means the explosive does not burn, explode, or exhibit a local crackling. The test apparatus consists of an "A" frame, a weighted pendulum to which a steel or hard fiber-faced shoe is attached, and a steel anvil. The explosive sample is placed on the anvil and the pendulum is adjusted and released from a height of 59 inches.

Paragraph (g) is a revision and update of existing § 15.12(f) and specifies that the total volume equivalent to carbon monoxide (CO) of the toxic gases produced by detonation of the explosive not exceed 2.5 cubic feet per pound of explosive. In the preproposal, the Agency included this limitation to be determined by the large chamber test in which the explosive shall propagate completely. The large chamber test will be used under this final rule.

The existing requirement in §15.12(f) that limits the volume of poisonous gases to 2.5 cubic feet per pound of explosive was not retained in the proposal. This was because MSHA believed, at that stage of the rulemaking process, that the hazards associated with toxic gases were appropriately addressed in 30 CFR 75.301–2 which requires that concentrations of noxious or poisonous gases not exceed the current threshold limit values (TLV) as specified by the American Conference of Governmental Industrial Hygienists. However, in the proposal the Agency sought information and data on any benefits to be obtained by retention of this provision.

Commenters opposed the deletion of the poisonous gas limitation stating that they consider the limitation to be a valuable criterion in formulating approved explosives. In addition, they do not believe the limitation duplicates the requirements of 30 CFR 75.301–2, but instead ensures the effectiveness of the protections afforded by the Part 75 provision.

Upon further analysis, MSHA has determined that a toxic gas limitation should be retained. While current ventilation regulations address exposure to a number of toxic gases, including those associated with the detonation of explosives, MSHA's experience indicates that control of such gases produced by explosives is a particularly effective means for limiting the high concentrations of toxic fumes that can be produced by detonation during blasting. That the initial concentrations are particularly hazardous is exemplified by four blasting-related accidents which occurred between 1980 and 1985 and resulted in 9 fatalities from exposure to toxic gases or fumes. Further, retaining a limitation will better enable MSHA to ensure compliance with short-term exposure limits included in MSHA's air quality regulations. These considerations, coupled with strong support from commenters for retaining the existing toxic gas provision, persuaded the Agency that a fume requirement is necessary to minimize hazards. Accordingly, MSHA has included a limitation on toxic gases in the final rule, but has modified the existing provision so that the total volume is determined relative to carbon monoxide. The final rule requirement follows, with minor editorial changes, the language in the provision limiting toxic gases set out in the preproposal draft of this rulemaking.

Paragraph (g)(1) discusses the large chamber test which is conducted so the gaseous products from the detonation can be collected and analyzed. The large chamber test, which has a volume of approximately 1350 cubic feet, replaces the Bichel and Crawshaw-Jones tests conducted under the existing requirements. The explosive charge is stemmed and fired from a cannon into the large chamber. This chamber test simulates conditions that are more representative of actual conditions of use (stemmed, simulated borehole, large expansion ratio) than the existing tests. The large chamber test also eliminates the use of two test apparatuses that are currently used for toxic gas determinations.

Paragraph (g)(2) specifies the method for determining the effective toxicity of each toxic gas produced by relating the toxic gas to carbon monoxide. The method utilizes the threshold limit value, time weighted average (TLV–TWA) of the ingredient and the TLV–TWA of carbon monoxide. This method is derived from the American Conference of Governmental Industrial Hygienists (ACGIH) following a combined component effect for mixtures. It is based on TLV's included in the Chemical Substances section of the publication of the American Conference of Governmental Industrial Hygienists (ACGIH) entitled "TLV's, Threshold Limit Values for 1988–1989 ('TLV Booklet')."

Under the method, the equivalent volume of each toxic gas produced relative to CO is determined by multiplying the measured volume of gas by a conversion factor. The conversion factor is equal to the TLV–TWA in parts-per-million for CO divided by the TLV–TWA for the toxic gas. The TLV–TWA conversion factor for each gas for which MSHA will test is specified in Table I following §15.20(g)(2). The total volume equivalent to CO of the toxic gases produced by detonation of the explosive is the sum of the equivalent volumes of individual toxic gases.

Paragraph (h) prescribes the tests to be conducted when a change is proposed to an approved explosive. A change involving cartridge diameter or length requires MSHA examination to determine what tests, if any, are necessary to evaluate the proposed change. A change to a cartridge diameter smaller than the smallest diameter cartridge covered by the approval requires that the rate-of-detonation and explosion-by-influence tests be conducted. This testing enables

MSHA to determine whether the approved explosive in the smaller diameter cartridges will continue to perform in accordance with the approval. A commenter suggested that the requirement for the explosion-by-influence test be deleted because testing done for the original approval on 1¼ inch diameter cartridges is sufficient to ensure reliable detonation of approved explosives. In MSHA's experience, however, detonation is not always reliable with certain explosive formulations when used in small diameter cartridges and, therefore, the other tests are necessary to ensure the safe performance of the modified explosive.

Paragraph (i) gives MSHA the flexibility to approve an explosive that incorporates new technology or new applications of existing technology for which the tests or performance requirements of the final rule are not appropriate. An approval will be issued under this provision only if it is determined by testing and evaluation that the explosive performs as safely as an explosive that meets the requirements of this rule. MSHA will develop appropriate tests and performance requirements when the explosive is submitted for approval. Variations in the test and evaluation methods will continue to emphasize the critical aspects of approved explosives, including stable chemical formulation and protection against ignition of an explosive atmosphere. This reflects MSHA's primary concern with the safe performance of explosives in the mining environment, rather than with their design.

Once MSHA approves an explosive under this section, the Agency will make the modified tests and requirements used by MSHA to evaluate a particular technology available to manufacturers and other interested persons. If over a period of time MSHA receives a number of applications for the same type of technology or newly adapted technology, MSHA will revise the explosive approval regulations through the rulemaking process to recognize such development.

One commenter objected to inclusion of this provision in the proposed rule because approval of an explosive under tests and criteria not contained in the rule would be improper. The commenter indicated that all approval requirements should be promulgated through rulemaking. The flexibility provided by this provision is necessary to ensure that MSHA's explosives approval program can best serve the needs of safety in a timely manner. MSHA foresees use of this provision only to accommodate innovation in the formulation of explosives. At the time MSHA issues an approval under this section, the Agency will make the criteria used to test and evaluate the product available to the mining community.

Section 15.21 Tolerances for ingredients.

This section is derived from existing § 15.21 and establishes tolerances for each ingredient in an explosive based on the composition set forth in the approval of an explosive. It revises the existing provisions and adds tolerance requirements for aluminum and physical sensitizing agents. Newer types of explosives often contain these substances which can affect the safe performance of an explosive and, therefore, these tolerances provide a safety limit for variations in the explosive composition.

The preproposal draft provision which would have established a tolerance of ±0.5 percent for aluminum and physical sensitizing agents was not included in the proposal. However, because aluminum and physical sensitizers can affect the safe performance of an approved explosive, tolerance requirements are necessary for these ingredients. Under the proposal, the applicant was allowed to establish a tolerance for these ingredients, based on its own technical data or experience.

One commenter objected to allowing the applicant to set the tolerances for aluminum and physical sensitizers, stating that it was MSHA's responsibility, as the safety agency involved, to specify the limits of variation for these ingredients. Several commenters stated that physical sensitizers may be in the form of density control agents which are not necessarily added during the manufacturing process as a certain percentage of the explosive formulation. Also, since physical sensitizers combined differently may be based on the chemical formulation of the explosive, the manufacturer is in the best position to set the tolerances appropriate to the explosive composition involved. Therefore, § 15.21(a) specifies the tolerances for physical sensitizers as those set by the applicant. However, small variations in the quantity of aluminum can affect the safe performance of approved explosives and, for this reason, it is important to closely control the allowable tolerance for aluminum. Commenters stated that the analytical methods used to determine the aluminum content in an explosive are subject to greater variations than ±0.5 percent and that inherent variations in the manufacturing process make adherence to this tolerance unrealistic. Upon further review, MSHA believes that it is technically attainable to achieve a ±0.7 percent tolerance for aluminum. Bureau of Mines measurements of aluminum in over 100 explosive samples show that less than 6 percent of the samples varied in tolerance by ±0.7 percent from the amount specified by the individual companies. Additionally, limited data from the Bureau of Mines indicates that a several percent tolerance variation in aluminum may affect the safe performance of an approved explosive. Therefore, MSHA specifies a ±0.7 percent tolerance for aluminum in the final rule.

The final rule, based on the comments received, retains the tolerances specified in the existing standards for carbonaceous materials, moisture, and other ingredients contained in the explosive formulation. Explosives manufactured within these tolerances have historically proven to be safe for use.

Section 15.22 Tolerance for performance, wrapper and specific gravity.

This section is derived from existing § 15.21 and prescribes the limits of variation for rate-of-detonation and specific gravity of the explosive for the weight of wrapper. The final rule is unchanged from the proposal and explosives are required to be manufactured in accordance with each specified tolerance.

Subpart C—Requirements for Approval of Sheathed Explosive Units or Other Explosive Units Designed To Be Fired Outside the Confines of a Borehole

Section 15.30 Technical requirements.

This section is new and sets forth the technical requirements for approval of sheathed explosive units. The comments received generally favored the concept of sheathed explosive units which are designed to be fired outside the confines of a borehold. One commenter stated that sheathed units will be especially beneficial in roof fall recovery and construction work and will provide a safe alternative to the hazards of firing "open shots." However, explosives manufacturers indicated in their comments that since no company is presently producing such units, they were unable to provide comments on Subpart C. Accordingly, the final requirements for sheathed explosive units in Subpart C are unchanged from

the proposal, except for identical modifications in the drop test in § 15.30(d) and the detonation test in § 15.30(f) to address the use of previously approved explosives in sheathed units.

Paragraph (a) specifies that the sheathed explosive unit contain no more than 1½ pounds of approved explosive. This quantity of explosives is the maximum amount used in the prototype units designed and tested by the Bureau of Mines, which were found to be adequate for all situations where sheathed explosives are likely to be used.

Paragraph (b) requires that the chemical composition of the sheath, as determined by MSHA analysis, conform to the composition furnished by the applicant. If in conformance, the applicant's composition description will be incorporated in the approval and will then be the standard to determine compliance with the approval during MSHA audits.

Paragraph (c) sets forth requirements for the detonator well for the sheathed explosive unit. The detonator well allows the detonator to be securely inserted into the unit in order to provide for reliable detonation.

Paragraph (d) specifies performance requirements for the outer covering of the sheathed explosive unit to ensure that the unit is durable and appropriate for use in underground mines. Units are subjected to a drop test to determine whether the contents are susceptible to shifting or damage under conditions comparable to those likely to be encountered in underground mines. The test is performed with the unit at the minimum product firing temperature established for the explosive in the unit. For units with explosives approved under prior regulations, the drop test is performed at 41 °F.

Paragraph (e) specifies the performance requirements for sheathed explosive units in gallery tests 9, 10, 11, and 12. Under the final rule, sheathed explosive units are subjected to 10 trials of each gallery test and are required to detonate completely without causing any ignition of methane or coal dust.

Gallery test 9 is conducted with 3 sheathed explosive units placed 2 feet apart on a concrete slab in an explosive methane-air atmosphere. The test provides for evaluation under conditions simulating the blasting of fallen rock in an underground mine.

Gallery test 10 is conducted with 3 sheathed explosive units in the same arrangement as in gallery test 9 in an explosive methane-air atmosphere in which bituminous coal dust has been predispersed.

Gallery test 11 is conducted with 3 sheathed explosive units arranged in a triangular pattern in a simulated crevice formed by two concrete slabs. The test is performed in an explosive methane-air atmosphere under conditions simulating blasting of an overhanging roof slab.

Gallery test 12 is conducted with 3 sheathed explosive units arranged in a triangular pattern in a corner formed by three steel plates. The test is performed in an explosive methane-air atmosphere under conditions simulating blasting along a rib where compression and reflection of the explosive shock wave are produced. A commenter suggested that gallery tests 9, 11, and 12 also be conducted in an atmosphere containing predispersed bituminous coal dust. The commenter believed that, because of the possibility of sheathed explosive units used in inadequately rock-dusted areas, the likelihood of a dust ignition should be evaluated in approving the units. However, the methane-air and methane-coal dust air atmosphere specified in the gallery tests are easier to ignite than coal dust alone and provide a more stringent tests of the units incendivity than the test proposed by the commenter.

Paragraph (f) requires that each of 10 sheathed explosive units detonate completely when fired at the minimum product firing temperature established for the explosive used in the unit or at 41°F for units with previously approved explosives. The test evaluates the effect of temperature on the sensitivity of the explosive and the performance of the flame-inhibiting material in the unit.

Paragraph (g) gives MSHA the flexibility to approve an explosive unit that incorporates new technology or new applications of existing technology for which the tests or performance requirements of the final rule are not appropriate. An approval will be issued under this provision only if it is determined by testing and evaluation that the explosive unit performs as safely as one that meets the requirements of the proposed rule. Under the final rule, MSHA will develop the appropriate tests and performance requirements when the explosive unit is submitted for approval. Variations in the test and evaluation methods will continue to emphasize the critical aspects of sheathed explosive units, including stable chemical formulation, durable construction, and protection against ignition of an explosive atmosphere. This reflects MSHA's concern with the safe performance of explosive units designed to be fired outside the confines of a borehold in the mining environment, rather than with their design.

Once MSHA approves an explosive unit under this section, the Agency will make the modified tests and requirements used by MSHA to evaluate a particular technology available to manufacturers and other interested persons. If over a period of time MSHA receives a number of applications for the same type of technology or newly adopted technology, MSHA will revise Subpart C through the rulemaking process to recognize such developments

One commenter objected to inclusion of this provision in the rule because approval of an explosive unit under tests and criteria not contained in the rule would be improper. The commenter indicated that all approval requirements should be promulgated through rulemaking. The flexibility provided by this provision is necessary to ensure that MSHA's explosives approval program best serves the needs of safety in a timely manner. MSHA foresees use of this provision only to accommodate innovation in explosive units designed to be fired outside the confines of a borehole.

Section 15.31 Tolerance of ingredients.

This section is new and prescribes the limits of variation from the composition of the sheath set forth in the approval of the sheathed explosive unit. Under the final rule, the tolerance for each ingredient in the sheath is required to be within the tolerance specified in Table II. The tolerances specified in Table II are derived from the existing requirements for ingredients in explosives. MSHA believes that these tolerances are also appropriate for sheathed explosive units.

Section 15.32 Tolerance for weight of explosive, sheath, wrapper and specific gravity.

This section is new and prescribes the limits of variation for certain characteristics of the sheathed explosive unit. Under the final rule, the sheathed explosive unit is required to be manufactured in accordance with the specified tolerances.

Derivation Table

The following derivation table lists: (1) Each section number of the final rule; and (2) the number of the existing regulation from which the final rule is derived.

DERIVATION TABLE

New Section	Old Section
15.1	15.1.
15.2	15.2.
15.3	15.9.
15.4	15.3, 15.4 and 15.15.
15.5	15.5 and 15.6.
15.6	15.13.
15.7	15.14.
15.8(a)	15.14.
15.8(b)	New.
15.9	15.9 and 15.17.
15.10	15.20, 15.21.
15.11	15.16 and 15.22.
15.20(a)	15.11, 15.12(a).
15.20(b), (c), (d), (e), (f), (g), (h)(3).	15.5(d), 15.10, 15.12 and 15.21.
15.20(h)(1), (h)(2)	15.5(d).
15.20(i)	New.
15.21	15.21.
15.22	15.21.
15.30	New.
15.31	New.
15.32	New.

Distribution Table

The following distribution table lists: (1) Each section number of the existing regulation; and (2) the section number of the final rule which contains provisions derived from the corresponding existing section.

DISTRIBUTION TABLE

Old Section	New Section
15.1	15.1.
15.2	15.2.
15.3	15.4.
15.4	Part 5.
15.5	15.5.
15.6(a), (b), (c), (d)	15.5.
15.6(e)	Removed.
15.7	Removed.
15.8	Removed.
15.9	15.3 and 15.9.
15.10(a)(1), (a)(2), (b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7).	15.20.
15.10(b)(2)	Removed.
15.11	15.20(a).
15.12(a), (b), (c), (d), (e), (f), (g), (h)	15.20.
15.13	15.6.
15.14(a), (b), (c)	15.7.
15.14(d)	Removed.
15.14(e)	15.8(a).
15.15	15.4.
15.16	15.11.
15.17	15.9.
15.18	Removed.
15.19(a), (b), (c)	Part 75.
15.19(d), (e)	Removed.
15.20	15.10.
15.21(a)(1), (a)(3), (a)(4), (a)(5), (a)(6), (b)(5).	15.10.
15.21(a)(2), (b)(4)	Removed.
15.21(b)(1), (b)(2)	15.21.
15.21(b)(3), (b)(6), (b)(7)	15.22.
15.22	Removed.
15.23	Removed.
15.24	Removed.
The Federal Mine Safety Code (as incorporated by section 15.19(e).	Part 75.

III. Drafting Information

The persons principally responsible for preparing this final rule are: Harry C. Verakis, Technical Support, MSHA; Helen Caraway, Office of Standards, Regulations, and Variances, MSHA; Edward C. Connor, Coal Mine Safety and Health, MSHA; Richard Mainiero, Bureau of Mines, Department of Interior; and Linda B. Fort, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, a regulatory flexibility analysis has been developed by the Agency for the purpose of comparing the cost associated with the final rule with the cost of existing requirements for approval of explosives for underground coal mines. In this analysis, summarized below, MSHA has determined that the final rule will not result in major cost increases nor have an effect of $100,000,000 or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory proposals. MSHA revisions to the existing rule update and clarify existing compliance requirements. Clarified compliance requirements which reflect advances in technology should benefit both large and small manufacturers of explosives.

There are only seven companies who have been granted approvals for explosives to be used in underground gassy mines. Three employ over 100 people and one is a multinational corporation. MSHA has determined that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. The Agency has, however, prepared an initial regulatory flexibility analysis and estimates that the annual cost for industry compliance with the existing requirements is $204,125 compared to $277,170 for Subpart A (General Provisions) of the final rule. This represents a cost increase of 36 percent when compared to the existing rule. Approximately 60 percent of this increase is due to the approval requirements for sheathed explosive units which are new. However, these costs will be offset totally by the projected cost savings of $261,497 from the use of approved sheathed in underground coal mines. In addition, allowing the use of sheathed units underground should result in a reduction in blasting injuries. MSHA accident data from 1978 to 1987 reveals that there were 9 incidents which resulted in a total of four fatalities and 14 injuries caused by firing unconfined shots.

No fixed estimates were calculated for Subpart B as requests for such data revealed that costs could range from $0 to approximately $500,000 depending upon the ingredients used in explosives to meet the technical requirements of the rule. Further, because Subpart C (Sheathed Explosive Units) represents a new requirement, cost estimates for commercial production of sheathed units were not available.

V. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Seven companies are listed by MSHA as having a total of about 100 different approved explosives. MSHA receives about 25 applications for some type of explosives approval per year. Approximately 12 approvals are issued each year and about 13 applications are denied approval. MSHA estimates that applications for approval require an average of five hours labor to prepare. The burden per application remains essentially the same under the final rule as under the existing requirement. MSHA estimates that the total annual recordkeeping burden under the final rule may increase slightly, primarily due to the introduction of sheathed explosive units. However, the total burden could be reduced if the total number of applications received remains at present levels.

Paperwork requirements for Part 15 are approved under OMB control number 1219–0066 which covers all of MSHA's equipment testing requirements in 30 CFR Parts 11 through 36. Part 15, which relates to explosives approval, currently specifies that the applicant submit a statement in duplicate explaining the nature and composition of the explosive. The final rule streamlines the process by specifically stating the information required for approval and extensions of approval. Information in duplicate is not required in the final rule. Moreover, the applicant will not be required to resubmit documentation duplicative of previously submitted information when requesting subsequent approval of a similar product or an extension of approval. Only information related to changes in the previously approved explosive or

sheathed explosive unit is required, avoiding unnecessary paperwork.

The final rule retains the existing requirement that the wrapper of each cartridge and each case of explosives be labeled with the brand or trade name and with a statement that the explosive is approved by MSHA. The final rule also extends these requirements to apply to sheathed explosive units. Added to the final rule is a requirement that each wrapper and case of explosives and sheathed units be marked with the test detonator strength and the minimum product firing temperature. Absent a Federal requirement, approval-holders would label explosive cartriduges, sheathed explosive units and cases with the brand or trade name and would need to purchase new plates to change the name of new formulations prior to marketing. MSHA estimates that the cost of the wrapper is essentially the same with or without the words "MSHA Approved Explosive", the test detonator strength, and the minimum product firing temperature. MSHA, therefore, has associated no cost with the requirement that the label include these items.

Prior to commercial production, manufacturers conduct exhaustive tests to evaluate the performance of explosives under a variety of field conditions. Manufacturers typically include design aspects in explosive formulations so the products will properly function over the range of temperatures that may be encountered in blasting operations in underground coal mines. Characteristics related to minimum product firing temperature are part of the manufacturer's design parameters for explosives and such data is presently available in product technical information and literature.

The existing requirement for approval holder to provide a case-insert, warning the user that the explosive is approved only when used in conformance with the requirements of Part 15, is not included in the final rule. MSHA believes that requirements governing the use of explosives are appropriately included in related safety standards and should not be addressed in requirements for approval of explosives. Since the final rule deletes this case-insert requirement, the total annual cost savings would be about $2400.

The final rule adds a new requirement that approval holders report to MSHA any knowledge of the distribution of approved explosives or sheathed explosive units not meeting the specifications of the approval. Few manufactured lots of explosives, which do not meet the specifications of the approval, are distributed inadvertently. Based on a worst case analysis, MSHA estimates that each approval holder may need to report the distribution of explosives or sheathed units which do not meet specifications once per year. The total cost for these reports would be about $100.

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35), the collection of information requirements contained in the final rule have been approved by OMB under control number 1219-0066.

List of Subjects in 30 CFR Part 15

Administrative practice and procedure, Explosives, Mine Safety and health, Underground mining.

Date: November 9, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, Chapter I of Title 30, Code of Federal Regulation is amended by revising Part 15 to read as follows:

PART 15—REQUIREMENTS FOR APPROVAL OF EXPLOSIVES AND SHEATHED EXPLOSIVE UNITS

Subpart A—General Provisions

Sec.

15.1 Purpose and effective dates.
15.2 Definitions.
15.3 Observers at tests and evaluations.
15.4 Application procedures and requirements.
15.5 Test samples.
15.6 Issuance of approval.
15.7 Approval marking.
15.8 Quality assurance.
15.9 Disclosure of information.
15.10 Post-approval product audit.
15.11 Revocation.

Subpart B—Requirements for Approval of Explosives

15.20 Technical requirements.
15.21 Tolerances for ingredients.
15.22 Tolerances for performance, wrapper, and specific gravity.

Subpart C—Requirements for Approval of Sheathed Explosive Units or Other Explosive Units Designed to be Fired Outside the Confines of a Borehole

15.30 Technical requirements.
15.31 Tolerances for ingredients.
15.32 Tolerances for weight of explosive, sheath, wrapper, and specific gravity.

Authority: 30 U.S.C. 957.

Subpart A—General Provisions

§ 15.1 Purpose and effective dates.

This part sets forth the requriements for approval of explosives and sheathed explosive units to be used in underground coal mines and certain underground metal and nonmetal gassy mines and is effective January 17, 1989. Those manufacturers proceeding under the provisions of the previous regulation may file requests for approval or extension of approval of explosives under that regulation until November 20, 1989. After November 20, 1989, all requests for approval or extension of approval of explosives or sheathed explosive units shall be made in accordance with Subpart A and the applicable subpart of this part. Explosives issued an approval under regulations in place prior to January 17, 1989, and in compliance with those regulations, may continue to be manufactured and marked as approved as long as no change to the explosive is made.

§ 15.2 Definitions.

The following definitions apply in this part.

Applicant. An individual or organization that manufactures or controls the production of an explosive or an explosive unit and that applies to MSHA for approval of that explosive or explosive unit.

Approval. A document issued by MSHA which states that an explosive or explosive unit has met the requirements of this part and which authorizes an approval marking identifying the explosive or explosive unit as approved as permissible.

Explosive. A substance, compound, or mixture, the primary purpose of which is to function by explosion.

Extension of approval. A document issued by MSHA which states that the change to an explosive or explosive unit previously approved by MSHA under this part meets the requirements of this part and which authorizes the continued use of the approval marking after the appropriate extension number has been added.

Minimum product firing temperature. The lowest product temperature at which the explosive or explosive unit is approved for use under this part.

Post-approval product audit. Examination, testing, or both, by MSHA of approved explosives or explosive units selected by MSHA to determine whether they meet the technical requirements and have been manufactured as approved.

Sheath. A chemical compound or mixture incorporated in a sheathed explosive unit and which forms a flame inhibiting cloud on detonation of the explosive.

Sheathed explosive unit. A device consisting of an approved or permissible explosive covered by a sheath encased in a sealed covering and designated to

be fired outside the confines of a borehole.

Test detonator. An instantaneous detonator that has a strength equivalent to that of a detonator with a base charge of 0.40–0.45 grams PETN.

§ 15.3 Observers at tests and evaluations.

Only personnel of MSHA and the Bureau of Mines, U.S. Department of the Interior, representatives of the applicant, and such other persons as agreed upon by MSHA and the applicant shall be present during tests and evaluations conducted under this part.

§ 15.4 Application procedures and requirements.

(a) *Application.* Requests for an approval or an extension of approval under this part shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, P.O. Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

(b) *Fees.* Fees calculated in accordance with Part 5 of this Title shall be submitted in accordance with § 5.40.

(c) *Original approval for explosives.* Each application for approval of an explosive shall include—

(1) A technical description of the explosive, including the chemical composition of the explosive with tolerances for each ingredient;

(2) A laboratory number or other suitable designation identifying the explosive. The applicant shall provide the brand or trade name under which the explosive will be marketed prior to issuance of the approval;

(3) The lengths and diameters of explosive cartridges for which approval is requested;

(4) The proposed minimum product firing temperature of the explosive; and

(5) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(d) *Original approval for sheathed explosive units.* Each application for approval of a sheathed explosive unit shall include—

(1) A technical description of the sheathed explosive unit which includes the chemical composition of the sheath, with tolerances for each ingredient, and the types of material used for the outer covering;

(2) The minimum thickness weight, and specific gravity of the sheath and outer covering;

(3) The brand or trade name, weight, specific gravity, and minimum product firing temperature of the approved explosive to be used in the unit;

(4) The ratio of the weight of the sheath to the weight of the explosive; and

(5) The name, address and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(e) *Subsequent approval of a similar explosive or sheathed explosive unit.* Each application for approval of an explosive or sheathed explosive unit similar to one for which the applicant already holds an approval shall include—

(1) The approval number of the explosive or sheathed explosive unit which most closely resembles the new one;

(2) The information specified in paragraphs (c) and (d) of this section for an original approval, as applicable, except that any document which is the same as the one listed by MSHA in the prior approval need not be submitted but shall be noted in the application; and

(3) An explanation of all change from the existing approval.

(f) *Extension of the approval.* Any change in an approved explosive or sheathed explosive unit from the documentation on file at MSHA that affects the technical requirements of this Part shall be submitted for approval prior to implementing the change.

(1) Each application for an extension of approval shall include—

(i) The MSHA-assigned approval number for the explosive or sheathed explosive unit for which the extension is sought;

(ii) A description of the proposed change to the approved explosive or sheathed explosive unit; and

(iii) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(2) MSHA will determine what tests, additional information, samples, or material, if any, are required to evaluate the proposed change.

(3) When a change involves the chemical composition of an approved explosive or sheathed explosive unit which affects the firing characteristics, MSHA may require the explosive or sheathed explosive unit to be distinguished from those associated with the former composition.

(Approved by the Office of Management and Budget under control number 1219–0066)

§ 15.5 Test samples.

(a) *Submission of test samples.* (1) The applicant shall not submit explosives or sheathed explosive units to be tested until requested to do so by MSHA.

(2) The applicant shall submit 70 pounds of 1¼-inch diameter explosives and additional cartridges in the amount of 3200 divided by the length in inches, except for cartridges 12, 20 and greater than 36 inches long. The applicant shall submit 70 pounds and additional cartridges in the amount of 3800 divided by the length in inches for cartridges 12, 20 and greater than 36 inches long.

(3) If approval is requested for cartridges in diameters less than 1-¼ inches, the applicant shall submit a number of cartridges equal to 1800 divided by the length in inches, except for cartridges 12, 20 and greater than 36 inches long. The applicant shall submit cartridges in the amount of 2200 divided by the length in inches for cartridges 12, 20 and greater than 36 inches long.

(4) If approval is requested for cartridges in diameters larger than 1-¼ inches, the applicant shall submit an additional 10 cartridges of each larger diameter.

(5) If approval is requested for cartridges in more than one length, the applicant shall submit an additional 10 cartridges for each additional length and diameter combination.

(6) Each applicant seeking approval of sheathed explosive units shall submit 140 units.

(b) *Condition and composition.* Explosives and sheathed explosive units will not be tested that—

(1) Contain chlorites, chlorates, or substances that will react over an extended time and cause degradation of the explosive or sheathed explosive unit;

(2) Are chemically unstable;

(3) Show leakage;

(4) Use aluminum clips to seal the cartridge;

(5) Contain any combination of perchlorate and aluminum;

(6) Contain more than 5 percent perchlorate; or

(7) Contain any perchlorate and less than 5 percent water.

(c) *Storage.* Explosives and sheathed explosive units shall be stored in a magazine for at least 30 days before gallery tests are conducted.

§ 15.6 Issuance of approval.

(a) MSHA will issue an approval or a notice of the reasons for denying approval after completing the evaluation and testing provided for by this part.

(b) An applicant shall not advertise or otherwise represent an explosive or sheathed explosive unit as approved until MSHA has issued an approval.

§ 15.7 Approval marking.

(a) An approved explosive or sheathed explosive unit shall be marketed only under the brand or test name specified in the approval.

(b) The wrapper of each cartridge and each case of approved explosives shall be legibly labeled with the following: the brand or trade name, "MSHA Approved Explosive", the test detonator strength, and the minimum product firing temperature.

(c) The other covering of each sheathed explosive unit and each case of approved sheathed explosive units shall be legibly labeled with the following: the brand or trade name, "MSHA Approved Sheathed Explosive Unit", the test detonator strength, and the minimum product firing temperature.

(Approved by the Office of Management and Budget under control number 1219-0066)

§ 15.8 Quality assurance.

(a) Applicants granted an approval or an extension of approval under this part shall manufacture the explosive or sheathed explosive unit as approved.

(b) Applicants shall immediately report to the MSHA Approval and Certification Center, any knowledge of explosives or sheathed explosive units that have been distributed that do not meet the specifications of the approval.

(Approved by the Office of Management and Budget under control number 1219-0066)

§ 15.9 Disclosure of information.

(a) All information concerning product specifications and performance submitted to MSHA by the applicant shall be considered proprietary information.

(b) MSHA will notify the applicants of requests for disclosure of information concerning its explosives or sheathed explosive units and shall give the applicant an opportunity to provide MSHA with a statement of its position prior to any disclosure.

§ 15.10 Post-approval product audit.

(a) Approved explosives and sheathed explosive units shall be subject to periodic audits by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based. Any approved explosive or sheathed explosive unit which is to be audited shall be selected by MSHA and be representative of those distributed for use in mines. The approval-holder may obtain any final report resulting from such audit.

(b) No more than once a year, except for cause, the approval-holder, at MSHA's request, shall make one case of explosives or 25 sheathed explosive units available at no cost to MSHA for an audit. The approval-holder may observe any tests conducted during this audit.

(c) An approved explosive or sheathed explosive unit shall be subject to audit for cause at any time MSHA believes that it is not in compliance with the technical requirements upon which the approval was based.

(d) Explosives approved under regulations in effect prior to January 17, 1989, shall conform to the provisions on field samples set out in those regulations (See 30 CFR Part 15, 1987 Edition).

§ 15.11 Revocation.

(a) MSHA may revoke for cause an approval issued under this part if the explosive or sheathed explosive unit—

(1) Fails to meet the applicable technical requirements; or

(2) Creates a hazard when used in a mine.

(b) Prior to revoking an approval, the approval-holder shall be informed in writing of MSHA's intention to revoke. The notice shall—

(1) Explain the specific reasons for the proposed revocation; and

(2) Provide the approval-holder an opportunity to demonstrate or achieve compliance with the product approval requirements.

(c) Upon request, the approval-holder shall be afforded an opportunity for a hearing.

(d) If an explosive or sheathed explosive unit poses an imminent hazard to the safety or health of miners, the approval may be immediately suspended without a written notice of the agency's intention to revoke. The suspension may continue until the revocation proceedings are completed.

Subpart B—Requirements for Approval of Explosives

§ 15.20 Technical requirements.

(a) *Chemical composition.* The chemical composition of the explosive shall be within the tolerances furnished by the applicant.

(b) *Rate-of-detonation test.* The explosive shall propagate completely in the rate-of-detonation test. The test is conducted at an ambient temperature between 68 and 86 °F. Nongelatinous explosives are initiated with a test detonator only, while gelatinous explosives are initiated with a test detonator and a 60-gram tetryl pellet booster. The test is conducted on—

(1) A 50-inch column of 1¼ inch diameter cartridges; and

(2) A 50-inch column of the smallest diameter cartridges less than 1¼ inches submitted for testing.

(c) *Air-gap sensitivity.* The air-gap sensitivity of the explosive shall be at least 2 inches at the minimum product firing temperature and 3 inches at a temperature between 68 and 86 °F, and the explosive shall propagate completely.

(1) Air-gap sensitivity of the explosive is determined in the explosion-by-influence test using the 7-inch cartridge method. The air-gap sensitivity is determined for 1¼ inch diameter cartridges and each cartridge diameter smaller than 1¼ inches. Explosives are initiated with a test detonator.

(2) The 7-inch cartridge method is conducted with two 8-inch cartridges. One inch is cut off the end of each cartridge. The cartridges are placed in a paper tube, the cut ends facing each other, with the appropriate 2-inch or 3-inch air gap between them. The test is conducted at a temperature between 68 and 86 °F and at the minimum product firing temperature proposed by the applicant, or 41 °F, whichever is lower. The test temperature at which the explosive propagates completely will be specified in the approval as the minimum product firing temperature at which the explosive is approved for use.

(d) *Gallery Test 7.* The explosive shall yield a value of at least 450 grams for the lower 95 percent confidence limit (L_{95}) on the weight for 50 percent probability of ignition (W_{50}) in gallery test 7 and shall propagate completely. The L_{95} and W_{50} values for the explosive are determined by using the Bruceton up-and-down method. A minimum of 20 trials are made with explosive charges of varying weights, including wrapper and seals. Each charge is primed with a test detonator, then tamped and stemmed with one pound of dry-milled fire clay into the borehole of a steel cannon. The cannon is fired into air containing 7.7 to 8.3 percent of natural gas. The air temperature is between 68 and 86 °F.

(e) *Gallery Test 8.* The explosive shall yield a value of at least 350 grams for the weight for 50 percent probability of ignition (W_{CDG}) in gallery test 8 and shall propagate completely. The (W_{CDG}) value for the explosive is determined using the Bruceton up-and-down method. A minimum of 10 tests are made with explosive charges of varying weights, including wrapper and seals. Each charge is primed with a test detonator, then tamped into the borehole of a steel cannon. The cannon is fired into a mixture of 8 pounds of bituminous coal dust predispersed into 640 cubic feet of air containing 3.8 to 4.2 percent of natural gas. The air temperature is between 68 and 86 °F.

(f) *Pendulum-friction test.* The explosive shall show no perceptible reaction in the pendulum-friction test with the hard fiber-faced shoe. Ten trials of the test are conducted by releasing the steel shoe from a height of 59 inches. If there is evidence of sensitivity, the test is repeated with the hard fiber-faced shoe.

(g) *Toxic gases.* The total volume equivalent to carbon monoxide (CO) of toxic gases produced by detonation of the explosive shall not exceed 2.5 cubic feet per pound of explosive as determined in the large chamber test. The explosive shall propagate completely.

(1) The large chamber test is conducted with a one-pound explosive charge, including wrapper and seal, primed with a test detonator. The explosive charge is loaded into the borehole of a steel cannon, then tamped and stemmed with one pound of dry-milled fire clay. The cannon is fired into the large chamber and the gaseous products resulting from detonation of the explosive are collected and analyzed for toxic gases. At least two trials are conducted.

(2) The equivalent volume of each toxic gas produced, relative to CO, is determined by multiplying the measured volume of the gas by a conversion factor. The conversion factor is equal to the threshold limit value, time weighted average (TLV–TWA) in parts-per-million for CO divided by the TLV–TWA for the toxic gas. The TLV–TWA conversion factor for each gas for which MSHA shall test is specified in Table I of this subpart. The total volume equivalent to CO of the toxic gases produced by detonation of the explosive is the sum of the equivalent volumes of the individual toxic gases.

TABLE I.—CONVERSION FACTORS FOR TOXIC GASES

[For Equivalent Volume Relative to Carbon Monoxide]

	Toxic Gas	
	Conversion Factor	TLV–TWA (PPM)
Ammonia	2	25
Carbon Dioxide	0.01	5000
Carbon Monoxide	1	50
Hydrogen Sulfide	5	10
Nitric Oxide	2	25
Nitrogen Dioxide	17	3
Sulfur Dioxide	25	2

(h) *Cartridge diameter and length changes.* (1) For proposed changes to an approved explosive involving only cartridge diameter or length, MSHA will determine what tests, if any, will be required.

(2) When a proposed change to an approved explosive involves a smaller diameter than that specified in the approval, the rate-of-detonation and air-gap sensitivity tests will be conducted.

(3) No test will be conducted on cartridges with diameters the same as or smaller than those that previously failed to detonate in the rate-of-detonation test.

(i) *New technology.* MSHA may approve an explosive that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that the explosive is as safe as those which meet the requirements of this subpart.

§ 15.21 Tolerances for ingredients.

Tolerances for each ingredient in an explosive, which are expressed as a percentage of the total explosive, shall not exceed the following:

(a) Physical sensitizers: The tolerances established by the applicant;

(b) Aluminum: ±0.7 percent;

(c) Carbonaceous materials: ±3 percent; and

(d) Moisture and ingredients other than specified in paragraphs (a), (b), and (c) of this section: The tolerances specified in Table II.

TABLE II.—TOLERANCES FOR MOISTURE AND OTHER INGREDIENTS

Quantity of ingredients (as percent of total explosive or sheath)	Tolerance percent
0 to 5.0	1.2
5.1 to 10.0	1.5
10.1 to 20.0	1.7
20.1 to 30.0	2.0
30.1 to 40.0	2.3
40.1 to 50.0	2.5
50.1 to 55.0	2.8
55.1 to 100.0	3.0

§ 15.22 Tolerances for performance, wrapper and specific gravity.

(a) The rate of detonation of the explosive shall be within ±15 percent of that specified in the approval.

(b) The weight of wrapper per 100 grams of explosive shall be within ±2 grams of that specified in the approval.

(c) The apparent specific gravity of the explosive shall be within ±7.5 percent of that specified in the approval.

Subpart C—Requirements for Approval of Sheathed Explosive Units or Other Explosive Units Designed to be Fired Outside the Confines of a Borehole

§ 15.30 Technical requirements.

(a) *Quantity of explosive.* The sheathed explosive unit shall contain not more than 1½ pounds of an approved or permissible explosive.

(b) *Chemical composition.* The chemical composition of the sheath shall be within the tolerances furnished by the applicant.

(c) *Detonator well.* The sheathed explosive unit shall have a detonator well that—

(1) Is protected by a sealed covering;

(2) Permits an instantaneous detonator to be inserted in the unit with the detonator completely embedded in the well;

(3) Is provided with a means of securing the detonator in the well; and

(4) Is clearly marked.

(d) *Drop test.* The outer covering of the sheathed explosive unit shall not tear or rupture and the internal components shall not shift position or be damaged in the drop test.

(1) The drop test is conducted on at least 10 sheathed explosive units. Each unit is dropped on its top, bottom, and edge from a height of 6 feet onto a concrete surface. For units with explosives approved with a minimum product firing temperature, the drop test is performed with the unit at the minimum product firing temperature established for the explosive in the unit. For units with explosives approved under regulations in effect prior to [the effective date of this rule], the drop test is performed with the unit at 41 °F.

(2) At least four units which have been drop-tested shall be cut-open and examined.

(3) At least six units which have been drop-tested shall be subjected to gallery tests 9 and 10 as provided in paragraphs (e)(1) and (e)(2) of this section.

(e) *Gallery tests.* No sheathed explosive unit shall cause an ignition in gallery tests 9, 10, 11, or 12. Ten trials in each gallery test shall be conducted and each sheathed explosive unit shall propagate completely in all tests.

(1) Gallery test 9 is conducted in each trial with three sheathed explosive units placed in a row 2 feet apart. One of the trials is conducted with sheathed explosive units which have been subjected to the drop test as provided in paragraph (d)(3) of this section. The units are placed on a concrete slab, primed with test detonators and fired in air containing 7.7 to 8.3 percent natural

gas or 8.7 to 9.3 percent methane. The air temperature is between 41 and 86 °F.

(2) Gallery test 10 is conducted in each trial with three sheathed explosive units placed in a row 2 feet apart. One of the trials is conducted with sheathed explosive units which have been subjected to the drop test as provided in paragraph (d)(3) of this section. The units are placed on a concrete slab, primed with test detonators and fired in air containing 3.8 to 4.2 percent natural gas, or 4.3 to 4.7 percent methane, mixed with 0.2 ounces per cubic foot of predispersed bituminous coal dust. The air temperature is between 41 and 86 °F.

(3) Gallery test 11 is conducted in each trial with three sheathed explosive units arranged in a triangular pattern with the units in contact with each other. The units are placed in a simulated crevice formed between two square concrete slabs, each measuring 24 inches on a side and 2 inches in thickness. The crevice is formed by placing one slab on top of the other and raising the edge of the upper slab at least 4 inches. The sheathed explosive units are primed with test detonators and fired in air containing 7.7 to 8.3 percent natural gas or 8.7 to 9.3 percent methane. The air temperature is between 41 and 86 °F.

(4) Gallery test 12 is conducted in each trial with three sheathed explosive units arranged in a triangular pattern with the units in contact with each other. The units are placed in a corner formed by three square steel plates, each measuring 24 inches on a side and one inch in thickness. The sheathed explosive units are primed with test detonators and fired in air containing 7.7 to 8.3 percent natural gas or 8.7 to 9.3 percent methane. The air temperature is between 41 and 86 °F.

(f) *Detonation test.* Each of ten sheathed explosive units shall propagate completely when fired at the minimum product firing temperature for the explosive used in the unit or 41 °F for units with explosives approved under regulations in effect prior to [insert the effective date of this rule]. The units are initiated with test detonators.

(g) *New technology.* MSHA may approve an explosive unit designed to be fired outside the confines of a borehole that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that such explosive unit is as safe as those which meet the requirements of this subpart.

§ 15.31 Tolerances for ingredients.

Tolerances established by the applicant for each ingredient in the sheath shall not exceed the tolerances specified in Table II § 15.21 of this part.

§ 15.32 Tolerances for weight of explosive, sheath, wrapper, and specific gravity.

(a) The weight of the explosive, the sheath, and the outer covering shall each be within ±7.5 percent of that specified in the approval.

(b) The ratio of the weight of the sheath to that of the explosive shall be within ±7.5 percent of that specified in the approval.

(c) The specific gravity of the explosive and sheath shall be within ±7.5 percent of that specified in the approval.

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Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Explosives and Blasting; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards For Explosives And Blasting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the Mine Safety and Health Administration's (MSHA) existing safety standards for explosives and blasting in underground coal mines. The revisions update existing provisions consistent with current technology, eliminate duplicative and unnecessary standards, reorganize the existing standards and provide alternative methods of compliance where possible.

EFFECTIVE DATE: The final rule is effective January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

The final rule revises the Mine Safety and Health Administration's existing safety standards for explosives and blasting in underground coal mines. These revisions are promulgated under section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act).

On May 8, 1984, MSHA published a notice in the **Federal Register** which announced the availability of its preproposal draft of explosive standards and scheduled public conferences to discuss it (49 FR 19601). Public conferences were held June 12, 1984, in Lexington, Kentucky, and June 14, 1984, in Pittsburgh, Pennsylvania. These conferences were well attended and MSHA received written comments from all segments of the coal mining community.

On May 9, 1986, MSHA published a proposed rule in the **Federal Register** (51 FR 17284). The proposal addressed the comments received regarding the preproposal draft. MSHA published a notice of public hearings in the **Federal Register** on October 21, 1986 (51 FR 37376). Hearings were held on November 18, 1986, in Pittsburgh, Pennsylvania, and November 20, 1986, in Lexington, Kentucky.

MSHA published a **Federal Register** notice (58 FR 9670) scheduling another hearing to receive additional testimony from interested parties concerning safety considerations when instantaneous and short-delay electric detonators are used in the same circuit. This hearing was held in Bruceton, Pennsylvania on April 22, 1987. The record remained open until May 15, 1987, to allow for the submission of post-hearing written comments and data on this issue. The record closed on December 19, 1986 for all other issues.

The Agency's final rule addresses the major comments received and is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act, the Paperwork Reduction Act and the Mine Act.

II. Discussion of the Final Rule

A. General Discussion

The use of explosives in underground coal mines presents a potentially serious risk of injury and death to miners. From 1978 through 1987 there were 41 fatalities resulting from the improper use of explosives. Additionally, during this period there were 312 nonfatal injuries in coal mines resulting from the improper use of explosives. Prevention of accidents involving explosives depends to a large extent on the knowledge and experience of persons in the mine responsible for using explosives, and adherence to the standards which guide mine operators and miners in the safe conduct of blasting operations.

The final rule addresses the need for knowledgeable and experienced personnel to perform blasting functions by requiring only "qualified persons" or persons working in the presence of and under the direction of a qualified person to use explosives underground. The final rule also updates MSHA's existing standards for explosives consistent with modern blasting practices and products. The final rule supplements existing standards where they currently do not address important aspects of blasting and deletes obsolete provisions.

Prevention of accidents with explosives is also dependent on the use of components especially designed to operate safely in an underground environment containing coal dust and methane gas. The final rule continues to require that explosives and blasting units used in underground coal mines be approved by MSHA. The regulations governing MSHA approval of explosives and sheathed explosive units are being published, in a separate rulemaking, simultaneously with this final rule. The Agency is also developing revisions to the approval requirements for blasting units. These revisions, which have been proposed as a subpart to 30 CFR Part 7, Product Testing by Applicant or Third Party, were made available for public comment in the **Federal Register** on June 22, 1988 (53 FR 23506). In addition, MSHA will seek to include in its regulatory program an approval schedule for detonators used in underground coal mines. As part of that rulemaking, changes would be made in this final rule to require the use of such approved detonators.

B. Section-by-Section Discussion

Section 75.1300 Definitions.

The practice of sequentially lettering general definitions in existing subparts, which was carried forward in the proposed rule, has been eliminated in this final rule. The former method was confusing to many commenters who questioned why the Subpart N revision of definitions began at letter "r". The final rule now contains definitions of terms specifically related to Subpart N arranged in alphabetical order.

Many commenters stated that the term "permissible", which was excluded in the proposed rule, has and continues to have widespread use and should be retained in the final rule. As a result, the final rule includes two definitions from the preproposal, "permissible blasting unit" and "permissible explosive."

The following definitions apply to Subpart N:

Approval. This term describes a written document issued by MSHA which states that an explosive or explosive unit has met the requirements of Part 15 and which authorizes an approval marking identifying the explosive or explosive unit as approved as permissible. This definition has been added to make Part 75, Subpart N consistent with Part 15.

Battery starting. This definition identifies a specific exclusion to the prohibition of firing shots outside a borehole and applies only to anthracite mines. A commenter objected to the use of unconfined shots in battery starting preferring to initiate the flow of coal down a breast or chute by other means, thereby reducing exposure of miners to unnecessary hazards. However, this procedure has been performed in anthracite mines for many years as long as methane was reduced to less than 1 percent. Because anthracite dust is not explosive, it does not present the same hazard as bituminous coal dust and the Agency has therefore retained the definition.

Blasting off the solid. This definition provides an explanation of a blasting technique which occurs without the provision of a kerf or second free face. The final rule is extended to include rock as well as coal blasting in response

to commenters who stated that it is not uncommon to encounter a rock fault across the full working face. While some commenters recommended prohibiting blasting off the solid stating that the practice is outdated and an unsafe method of mining, the Agency defines and regulates this practice under this final rule.

Instantaneous detonator. This definition describes a type of electric detonator that is commercially available for use in underground coal mines and which also has the performance characteristics for use with a sheathed explosive unit.

Laminated partition. This definition specifies the construction of the partition required to separate detonators from explosives when transported or stored. The definition remains unchanged from the proposed rule.

Opener hole. This definition describes the first borehole or holes fired in a ground when blasting off the solid to create an additional free face. This definition is essentially unchanged from the proposed rule.

Permissible blasting unit. This definition specifies a device which has been approved by MSHA for firing electric detonators. MSHA is in the process of revising the approval requirements for blasting units. The term "approved" that was used in the proposed Part 75, Subpart N definition is changed to "permissible" in response to comments. The proposed rule used the term "approved" instead of "permissible" to describe the explosive and blasting equipment required to be used by these provisions. The purpose of this was to standardize MSHA terminology used to describe mining products evaluated for safety by the Agency. Commenters objected, however, stating that this would result in confusion. In support of this, they noted that the term "permissible" has a long history of use in the explosives industry and that it also appears in State mining regulations. MSHA agrees that the term "permissible" is pervasively used in the industry worldwide to describe MSHA-approved explosives and blasting units. Upon reconsideration, MSHA retains the term "permissible blasting unit" in the final rule.

Permissible explosive. This definition specifies an explosive substance approved by MSHA for use in underground coal mines. As indicated above, the term "permissible" was used in the preproposal, but not retained in the proposal. Commenters urged that the term "permissible" be used instead of the term "approved." The final rule retains the term "permissible explosive."

Round. This definition describes a group of boreholes which are fired or intended to be fired in a continuous sequence by a single application of the firing current. One commenter suggested that the term "shots" in the proposed definition be changed to "holes" because this term is accepted and familiar in the industry. However, in the final rule, the term "shots" is changed to "boreholes." This term is more specific and is in keeping with the Agency's intent that regulations be as unambiguous as possible.

Sheathed explosive unit. This definition, as does the proposed definition, describes the unit as "a permissible explosive covered by a sheath of flame-inhibiting material encased in a sealed covering." Commenters stated that this terminology was too specific and would not provide for new technology. However, provisions are added to § 75.1315 to allow for the introduction of new technology. Accordingly, the definition is retained in the final rule to distinguish the units from other types of explosives.

Short-delay electric detonator. This definition specifies the range of delay periods for short-delay detonators that are commercially available for use in underground coal mines.

One commenter recommended that delay period numbers be included in the definition. However, delay period numbers corresponding to a given delay time may vary from manufacturer to manufacturer and thus not be uniform throughout the industry. Therefore, the Agency has not included delay period numbers in the definition.

Another commenter stated that the extension of the delay period beyond 500 milliseconds is not supported by established or promulgated regulations. However, research conducted by the Bureau of Mines, in conjunction with MSHA, has provided evidence that this time period can be extended to 1,000 milliseconds without increasing the risk of a methane or coal dust explosion. Accordingly, the definition is unchanged from the proposal. Comments concerning approved detonators are further discussed under § 75.1310(e).

Section 75.1301 Qualified person.

This standard revises the existing provision of 30 CFR Part 15 requiring explosives to be fired by "certified shot firers" and sets forth requirements for becoming qualified to perform this work.

MSHA statistics indicate that the persons most frequently injured in accidents with explosives are those firing the explosives. A frequent contributing factor has been the failure of these persons to follow safe blasting practices.

To address this risk to miner safety, the proposal included alternative qualification requirements for persons using explosives. Under the proposal, persons could have been qualified to use explosives if they were certified or qualified to do so by the State in which the mine was located, or if they had at least 1 year of underground coal mining experience and have demonstrated to an authorized representative of the Secretary the ability to properly use permissible explosives.

The final rule provides two alternatives for achieving qualification under this subpart. First, a person is a "qualified person" when the individual is certified or qualified to use explosives by the State in which the mine is located, provided that the State requires a demonstration of ability to safely use permissible explosives in accordance with Subpart N. This approach continues to recognize State qualification and certification programs for shot firers. However, under the final rule these programs will only be recognized if a demonstration of ability is included in the State program. This change from the proposal and existing standards recognizes evaluation of the individual's skill to safely use explosives to be the objective of the qualification requirement in the final rule.

Second, in States that do not certify or qualify persons to use explosives, a person is a "qualified person" if the individual has at least 1 year experience working underground on a coal-producing section of a mine where explosives are used and demonstrates to an authorized representative of the Secretary the ability to safely use explosives. Upon successful demonstration of this ability, MSHA's authorized representative will make application through the Qualification and Certification Unit in Denver, Colorado and a document indicating Federal qualification will be issued to the applicant. This aspect of the final rule provides for Federal qualification of persons to use explosives in underground coal mines. It addresses the need for a qualification program where none is available from the State in which the mine is located. The requirement is supported by MSHA accident data which shows that failure of the blaster to follow safe blasting practices or regulations was a contributing factor in over 80% of the fatal blasting accidents in underground coal mines from 1980 through 1986. In

addition, a Bureau of Mines evaluation of coal mine blasting accidents between 1978 and 1981 shows that the blaster was the person injured in 65% of the accidents.

The 1-year experience requirement was included in the proposal. However, the final rule specifies that such experience must be acquired while working on a coal-producing section where explosives are used. This change reflects the need for relevant experience that can be expected to provide the prospective qualified person with basic knowledge about the underground coal mining environment where explosives are used and the safety considerations uniquely involved in this work. To protect the safety of himself and others, the blaster must be capable of recognizing hazards associated with methane and roof and rib conditions in the working place. Additionally, the blaster must know the potential dangers from equipment and other mining activities in the immediate face area. He must also be experienced in face area development and mining techniques to ensure the safety of all section personnel during blasting.

One commenter expressed the opinion that State shot firer certification programs are inadequate and noted that training courses and written tests are required in other major mining countries. Other commenters stated that certain State programs such as those in Colorado and Virginia were effective and therefore should not be duplicated by the Federal Government. No comments from any State mining agencies were received on this issue. MSHA recognizes that State requirements for qualification or certification of persons to use explosives are not uniform. These programs, however, can provide appropriate systems for qualifying persons if certain necessary elements are met. The final rule, therefore, continues to recognize them, provided that a demonstration of ability to safely use permissible explosives in accordance with this subpart is included in the State program. The demonstration of ability requirement will provide a means of ensuring that each person is competent to use such explosives.

MSHA is aware that there are States which do not currently require this demonstration of ability in their qualification programs and, therefore, need time to address this issue. For this reason, paragraph (b) provides that persons qualified or certified by a State to use permissible explosives underground prior to May 17, 1989, that is, six months after publication, are considered qualified under § 75.1301 even though the State program did not contain a demonstration of ability requirement. During this six-month period, those States with programs which do not meet the requirements of this rule can take the necessary steps for a demonstration of ability provision in their programs. After the six months have elapsed, however, State programs without this provision will not be recognized by MSHA and persons qualified or certified under such programs will not be considered "qualified persons" for purpose of this rule.

For purposes of Federal qualification, other commenters suggested deletion of the coal mining experience requirement and retaining only a demonstration of ability requirement. These commenters indicated that if persons can demonstrate their ability, then experience is unnecessary. The commenters went on to note that, in the western United States, miners with extensive underground noncoal mining experience could be precluded from being qualified persons and that, as a result, some western coal mine operators might encounter difficulty finding miners with the required experience.

The conditions and hazards inherent in underground coal mining where explosives are used are different than most noncoal mines. The presence of methane gas and coal dust in the mining atmosphere presents hazards from ignitions and mine explosions not encountered in most other types of mines where explosives are used. For these reasons, the proposed coal mining experience requirement is retained in the final rule.

A commenter also recommended that MSHA continue to recognize State programs for qualifying persons to use explosives in underground coal mines, but not establish a new Federal requirement. This approach, however, was not adopted since it would not address the qualification of persons to work in mines in States with no qualification or certification program.

Section 75.1310 Explosives and blasting equipment.

This section of the final rule is derived from existing §§ 15.19(d), 75.1300 and 75.1303 except paragraph (d) which is new, and prescribes the types of explosives and blasting equipment that are permitted in underground coal mines. In addition, the section prohibits certain types of blasting materials from being taken or used in underground coal mines.

Paragraph (a) allows only permissible explosives, approved sheathed explosives units and permissible blasting units to be taken into or used in the underground areas of coal mines because of the potential explosive atmosphere. The final rule differs from the proposed rule in several respects. The proposal specified that explosives taken underground be approved under 30 CFR Part 15, Requirements for Approval of Explosives and Sheathed Explosive Units. It did not expressly recognize sheathed explosive units nor specify that only approved blasting units be taken underground. For clarity, the final rule identifies approved sheathed explosive units, which will be evaluated for use in mines by MSHA under revised Part 15, as being permitted in underground coal mines. In addition, it specifies that only permissible blasting units are to be taken or used underground.

Paragraph (b) lists those blasting items which are not permitted to be taken into or used in underground areas. These are black blasting powder, aluminum or aluminum-alloy-cased detonators with aluminum leg wires and safety fuses. Black blasting powder and safety fuses involve recognized fire and explosion hazards. Black blasting powder is highly deflagrating and does not have the flame-inhibiting characteristics required for approved explosives. The final rule identifies black blasting powder as a prohibited explosive in underground coal mines. This was not included in the proposal because only approved explosives, which do not include black blasting powder, were to be permitted underground. For clarity, however, the final rule retains the existing prohibition against the use of black blasting powder. A safety fuse, when ignited, produces a jet of flame that will ignite methane or float coal dust. Aluminum also presents a safety hazard because of its high incendivity. A coating of aluminum oxide can also form on the blasting wires and cause an increase in the electric contact resistance which can be the source of a misfire in a blasting circuit. Because of the mechanical properties of aluminum wire, splices can also loosen and reduce the contact between conductors.

Explosives, sheathed explosive units and blasting units must meet certain design and performance requirements to be approved for use in the potentially explosive atmosphere of underground coal mines. The materials prohibited by paragraph (b) do not meet these safety requirements and are known to present

a hazard if used in underground coal mines.

Some commenters requested that the proposed prohibition of nonelectric initiating systems be removed. While the final rule does not retain the proposed prohibition against nonelectric initiating devices, the definitions of instantaneous and short-delay detonators address only electric initiation systems. Commenters presented information which shows that new developments in explosive initiating systems indicate that alternate systems safe for use in underground coal mines may be developed in the foreseeable future. Presently MSHA has no criteria with which to evaluate nonelectric initiating systems. Until such time as standards are developed, the present petition for modification procedures are available to the mining industry. This process would require a case-by-case evaluation of nonelectric initiating systems to determine whether they perform as safely as the present performance of electric initiating devices.

Paragraph (c) requires that explosives be fired only with a permissible blasting unit used in a manner consistent with the blasting unit approval. This provision of the final rule replaces the proposed provision that explosives be fired only with an approved blasting unit that has sufficient capacity and is appropriate for the blasting operation.

MSHA recognizes that firing rounds containing a large number of boreholes is necessary under certain circumstances, such as when large amounts of rock need to be blasted. To address these conditions, blasting units designed to fire more than 20 boreholes, sometimes called large-capacity blasting units, have been tested and evaluated by the Agency under interim criteria and specifications and have been permitted to be used. The Agency's existing approval regulations for blasting units, 30 CFR Part 25, do not include specifications for the approval of such units. However, through the separate rulemaking of 30 CFR Part 7, Subpart D Blasting Units, MSHA has proposed new approval specifications that would recognize blasting units with the capacity to fire more than 20 boreholes in a round. Until these new approval regulations for blasting units are completed, blasting units evaluated under interim criteria by MSHA for safe use in underground coal mine atmospheres are considered to be approved for purposes of this regulation. Paragraph (c), therefore, requires that explosives be fired only with a permissible blasting unit used in a manner consistent with its approval.

Those blasting units that are approved by MSHA to fire only short-delay electric detonators will still continue to be permissible under this final rule. The Agency intends to allow these units to be used when firing instantaneous and short-delay detonators up to 1,000 milliseconds in bituminous mines, and also long period delay detonators in anthracite mines since there is no safety hazard apparent in using blasting units with either of these detonators. Research conducted by the Bureau of Mines in developing criteria for sheathed units and evaluating delay periods for detonators has demonstrated that permissible blasting units approved under Part 25 can be used safely with instantaneous, short- and long-delay detonators.

The primary purpose of using approved blasting units is to minimize the risk of igniting methane gas released by blasting or igniting coal dust placed into suspension by the forces created by the detonation of explosives. While this hazard is greater in the face area and in return air courses, it is also present in other areas of the mine when explosives are fired. As noted in the proposal, in 1970 a coal dust explosion occurred in an area outby the face and 38 miners were killed. While this accident may not have been caused by the failure to use an approved blasting unit, it does demonstrate that the potential exists for an ignition of coal dust or methane in areas of the mine other than inby the last open crosscut or in return air courses. For this reason, the final rule retains the principle of the existing standards that only blasting units approved as permissible are permitted in underground coal mines.

A commenter questioned the proposed requirement that the blasting unit used be "appropriate for the blasting operation". The purpose of this provision was to require that the capacity and function of the blasting unit be matched with the blasting to be performed. This purpose is addressed by the final rule which requires that a permissible blasting unit be "used in a manner consistent with its approval". Thus, if a blasting unit is approved to initiate up to 20 boreholes per round, it must not be used to initiate more than 20 boreholes in a round.

Paragraph (d) prohibits the use of permissible explosives and sheathed explosive units underground when they are below the minimum product firing temperature specified by the approval. The minimum product firing temperature for permissible explosives and sheathed explosive units are part of the approval issued for such explosives and sheathed units under Part 15. As explained in the proposal, the product temperature at which an explosive or sheathed unit is used directly affects its safe performance. Additional discussion of this issue can be found in the new explosives approval regulations.

Several commenters noted that the minimum product firing temperatures for approved explosives are not presently available. Previous MSHA regulations for the approval of explosives did not address a minimum product firing temperature. In Part 15, the final rule for the approval of explosives and sheathed explosive units requires the manufacturer to designate and display the minimum product firing temperature on the approval label. Under this final rule, explosives and sheathed units must not be fired when the product is below the temperature appearing on the approval label. MSHA will continue to allow the use of previously approved explosives recommending that they be fired in accordance with the manufacturer's recommended product temperature.

Paragraph (e) requires that electric detonators be compatible with the blasting unit and have sufficient strength to initiate the explosive being used. When operated, permissible blasting units provide a short burst of electric current within certain specifications. Factors that influence the performance of these units in conjunction with permissible explosives include the resistance created by the detonators to be fired and the energy necessary to initiate them. For example, detonators requiring more than 2 amperes to reliably initiate them may result in misfires when used with permissible blasting units. Likewise, some imported detonators of less than No. 8 strength may not reliably fire certain types of permissible explosives. MSHA is aware of detonators, introduced into the U.S. market and advertised as suitable for use in gassy mines, which require an initiating current exceeding the tested capacity of blasting units approved under 30 CFR Part 25. Further, Bureau of Mines tests of other imported detonators entering the U.S. market show reduced minimum no-fire currents. Uncontrolled minimum no-fire currents could lead to detonation of explosives during circuit testing, or greater sensitivity to stray electrical currents. These are examples of detonators which would be incompatible with the blasting unit and therefore not allowed under this provision.

Under the preproposal draft, the issue of detonator compatibility was to be primarily addressed by new MSHA approval regulations for detonators. The proposal did not retain this approach, except that it would have required blasting units to "have sufficient capacity and be appropriate for the blasting operation". Since the proposed rule was published, MSHA has become aware of new detonators on the market which may not have the same characteristics as those previously available. Therefore, MSHA will seek to include an approval schedule for detonators used in underground coal mines in its regulatory program.

Section 75.1311 Transporting explosives and detonators.

This standard is derived from existing §§ 75.1301, 75.1304, 75.1305 and 75.1403–7 except § 75.1311(b)(2). This section specifies the requirements for transporting explosives and detonators underground. The hazards addressed by these standards are damage to explosives and detonators and accidental detonations. The final rule maintains the approach used in the proposal by specifying requirements for particular methods of transportation.

The final rule also adopts the suggestions of a commenter who recommended that the new standards should distinguish between track-mounted and other types of vehicles. The final rule distinguishes requirements for cars or vehicles and trolley locomotives based on the unique hazards which are presented by each mode of transportation. The final rule separately addresses the transportation of explosives and detonators by hand.

Paragraph (a) sets forth general requirements for transporting explosives and detonators underground, regardless of the transportation method. As in the proposal, the final rule requires that explosives and detonators be enclosed in separate, substantially constructed containers made of nonconductive material, with no metal or other conductive material exposed inside. It further clarifies that both Class A and Class C detonators in quantities greater than 1,000 be maintained in the original containers as shipped from the manufacturer to gain additional protection against accidental initiation. This is consistent with Department of Transportation (DOT) requirements for transporting explosives and detonators unless they are transported in separate vehicles. This provision reduces the risk of damage or spillage. Transporting explosives and detonators in separate containers segregates the initiating devices from the explosives, thus providing protection against accidental detonation of the explosives by the detonators. Substantially constructed, nonconductive containers protect explosives and detonators from electric current and damage or spillage during transportation. Typically, original containers for explosives are heavy grade cardboard with a water-repellant finish. When closed and in good condition, these containers adequately protect the contents. Likewise, the original packaging for detonators is nonconductive and holds the product in a stable, protected fashion suitable for transportation underground.

Paragraph (a) also requires that each container of explosives and detonators be indelibly marked with a readily visible warning identifying the contents. This final rule differs from the proposal which required only that the container be marked with a warning identifying the contents as explosive.

One commenter noted that the proposal might have allowed a person to print a warning with chalk and suggested that reflective lettering at least 6-inches high be required. The final rule provides that the warning must be "readily visible". This means that the warning must be easily seen by those people who work in the vicinity of the containers so as to alert them to the presence and contents of the containers. With this approach, the final rule permits the use of any effective method that informs approaching miners of the presence of explosives and detonators. In the final rule "indelibly" marked is added in response to this comment. "Indelibly marked" does not allow the use of chalk or any writing material which could be smeared, erased, or susceptible to change from the mine environment.

Paragraph (b) of the final rule applies when explosives and detonators are transported by any type of cars or vehicles. The cars or vehicles must be marked with warnings identifying the contents as explosive. The warning must be visible for miners approaching from any direction and be written in indelible letters. This warning can be in the form of removable signs. The final rule remains substantially the same as the proposal. The term "vehicle" is added to the final rule to clarify that these standards apply to any type of explosives and transportation equipment used underground. Because a car or vehicle can change direction or be approached from various sides and directions, the final rule essentially includes the preproposal provision in specifying that the warning be readily visible to miners approaching from any direction.

Several commenters suggested that the final rule include a new requirement that containers carrying explosives and detonators be situated in vehicles and cars so that they do not extend beyond the profile of the vehicle. While such a provision would limit the possibilities of damage and spillage if a container were to strike the roof or a rib, MSHA has concluded that such a requirement is unnecessary. The Agency's evaluation of explosive-related transportation accidents in underground coal mines did not indicate that any of these accidents were caused by the containers of explosives or detonators extending beyond the profile of the vehicle.

Paragraph (b) also addresses requirements for transporting detonators with explosives. It requires that explosives and detonators be transported in separate cars or vehicles. As an alternative, explosives and detonators may be transported in the same car or vehicle, provided that both Class A and Class C detonators in quantities greater than 1,000 are kept in the original containers as shipped from the manufacturer and separated from explosives by a hardwood partition of at least 4 inches thick, a laminated partition or equivalent. Additional protection must be provided when transporting these types and quantities of detonators with explosives. The experience of the Institute of Makers of Explosives (IME) has also shown that all Class A and Class C electric detonators may be shipped with prescribed packaging requirements and quantities in an IME 22 container. This container provides protection which is consistent with the hardwood or laminated partition prescribed in this rule. The IME publication entitled "Guide for the Use of IME 22 Container", April, 1988, provides information related to packaging and container shipment of detonators. Both Class A and Class C detonators may be transported in quantities of no more than 1,000 in the same vehicle with explosives if separated by 4 inches of hardwood, a laminated partition or equivalent. The principal purpose behind separating explosives and detonators during transportation is to minimize the danger of detonating the explosives in the event the detonators are accidentally initiated. The final rule further clarifies explosives transportation requirements in the proposal by requiring additional protection when certain detonators are transported with explosives. This final rule provision is consistent with IME guidelines and DOT regulations.

In response to several comments to the preproposal, the definition of "laminated partition" was revised in the proposed rule to specify minimum nominal dimensions for a laminated barrier rather than exact dimensions. The definition was derived from the Institute of Makers of Explosives, Pamphlet Number 22, January 1, 1985. The final definition is the same as the proposal.

Paragraph (b)(3) prohibits persons, other than those necessary to operate the equipment or to accompany the explosives and detonators, from being transported with the explosives and detonators. This provision is the same as the proposal and provides for a minimum number of miners to be exposed to a potentially hazardous situation.

Several commenters recommended that the final rule distinguish between track-mounted vehicles used for transportation of explosives and detonators and other types of vehicles used for this purpose. In response to these comments, and recognizing that certain track-mounted vehicles carrying explosives and detonators can involve hazards such as sparks from an arcing trolley wire which are not present with other types of vehicles, the use of trolley locomotives is separately addressed in paragraph (b)(4).

The final rule revises and makes mandatory the existing safeguard criterion in § 75.1403–7(i). It requires that trips carrying explosives and detonators be separated by at least a 5-minute interval from mantrips. Although not included in the proposed rule, a similar provision requiring a 5-minute interval was included in the preproposal draft. One commenter objected that the provision was not in the proposed rule. Based on the Agency's experience with the existing criterion, the 5-minute interval is an effective safety measure. This precaution reduces the chance of any collision with other track haulage equipment when explosives or detonators are being transported. Should a collision occur causing the detonation of transported explosives, the entire mine is in jeopardy of a propagating coal dust explosion. A review of MSHA accident data shows a high frequency of track haulage accidents underground. This information coupled with the hazards of transporting explosives and detonators, has caused MSHA, upon reconsideration, to adopt the 5-minute interval but limits the application to mantrips rather than all trips as specified in the preproposal. No commenters on the preproposal opposed its inclusion. The final rule deletes the existing criteria provision contained in § 75.1403–7(i) and makes the 5-minute interval mandatory for all mantrips.

The final rule also requires that when trolley locomotives are used, the cars containing explosives and detonators must be separated from the locomotive by at least one car that is either empty or that only contains noncombustible materials. This standard was included in the preproposal, but not in the proposal draft. It addresses the danger of an accident or a sudden stop during which the explosives or detonators could, unless adequately separated from the locomotive, come into contact with the heat or electricity generated by the locomotive, possibly resulting in an explosion.

Paragraph (c) sets forth requirements for transporting explosives and detonators on conveyor belts. These standards require explosives and detonators to be kept separated to avoid an accident with one from involving the other. The final rule also addresses the hazard of damaging and spilling explosives and detonators when using belt conveyors for transportation. One commenter suggested that in mines where there is a means of transporting explosives and detonators other than conveyor belts, the final rule should require the other method to be used. In MSHA's experience, tranportation of explosives and detonators by conveyor belt is safe, provided that the precautions prescribed by the rule are followed. When dangerous circumstances have been created during transportation of explosives and detonators by conveyor belt, they have been the result of collisions with obstructions or unsafe handling practices at transfer points or when unloading.

Like the proposal, paragraph (c)(1) provides that at least 6 inches of clearance must be maintained between the top of any container of detonators or explosives and the mine roof, or other obstruction along the conveyor belt. A commenter suggested that a minimum of 18 inches of clearance be required to be maintained between the top of containers of explosives and detonators and the mine roof or other obstruction. The final rule requires 6 inches of clearance instead of 18 inches because the required clearance is both adequate and reasonable to protect against damage to or spilage of explosives and detonators. It also accounts for vertical movement of the containers at uneven locations along a beltline, while recognizing the confined nature of the underground environment.

Except when persons are riding the belt to accompany explosives or detonators, a person must be at each transfer point between belts and the unloading location. This exception has been retained from the proposal recognizing that these persons would be in a position to stop the belts at these transfer and unloading points. Conveyor belts are also required to be stopped before explosives or detonators are loaded or unloaded. This new provision has been added to the final rule in response to a comment and is based on MSHA's assessment of several hazards associated with working around moving conveyor belts. An MSHA study, presented at the Fourteenth Annual Institute on Coal Mining Health and Safety at Blacksburg Virginia in 1983, on transportation and materials handling during the period from 1975 to 1982 showed 50 persons of all accidents associated with handling materials in underground coal mines to be conveyor related. Stopping the belt before loading or unloading allows stable positioning of cartons thereby reducing the potential of explosives and/or detonators from being carried over a belt tailpiece causing damage or detonation. It also protects against the hazard of miners being pulled into the moving belt during the course of handling containers.

Paragraph (d) addresses transportation of explosives and detonators by hand. It requires that they be carried in separate, nonconductive containers to keep explosives from coming in contact with initiating devices and to protect explosives and detonators from external electric sources. The original containers, rubberized bags or other nonconductive containers may be used to comply with this provision. The use of rubberized bags when transporting explosives and detonators by hand has proven to be safe.

The provision addressing hand-carried explosives and detonators was inadvertently left out of the proposal. MSHA recognizes that hand-carrying is likely to be used at some point when transporting explosives and detonators to the place of use. Therefore, this provision has been added to the final rule.

Section 75.1312 Explosives and detonators in underground magazines.

The final rule is derived from existing § 15.19(b) and §§ 75.1301, 75.1306 and 75.1307, except for paragraphs (c), (f) and (g) which are new. The rule establishes basic requirements for explosives and detonators kept in underground magazines and places

limits on the quantity of explosives permitted underground.

Paragraph (a), like the existing rule, limits the quantity of explosives kept in underground magazines to no more than is needed for 48 hours of use. This quantity limit, which remains unchanged from the proposed rule, will vary at each mine according to the amount of explosives used in the operation. Limiting the amount of explosives underground protects against a large quantity of explosives being involved in a mine fire or explosion.

One commenter recommended a limit on both the quantity and time during which explosives may be stored, suggesting that only amounts needed and used within a 24-hour time period be permitted. Other commenters expressed concern that the proposed 48-hour period could lead to enforcement problems since usage may vary at a particular mine for any 48-hour time period, particularly for an operator who does not use explosives for the extraction of coal. One commenter recommended eliminating this requirement and suggested using instead a standard which addresses removal of deteriorated explosives from the mine. This commenter expressed the view that manufacturers have achieved a safe level of product stability and that the 48-hour standard would not address the hazards associated with excessive quantities of explosives stored underground. Another commenter stated that a 48-hour supply rule would be too restrictive, leading to increased handling and miner exposure to hazards transporting explosives. This commenter recommended a 7-day storage supply limitation.

The final rule limits the quantity of explosives kept underground to that amount expected to be used within 48 hours. Some commenters were confused at the public hearing as to the meaning of the quantity limit. MSHA emphasizes that the 48-hour rule is not a time limit for storage underground which requires that explosives be removed after 48 hours. Instead, it is a quantity limit on the volume of explosives stored underground, the quantity being that amount which would normally be used in the operation over 48 hours. To avoid unnecessary handling of explosives, MSHA has interpreted the existing standard in this manner and it has been industry practice for more than 30 years.

Paragraph (b) requires that explosives and detonators taken underground be kept in separate closed magazines at least 5 feet apart, or in the same closed magazine with the explosives and detonators separated by a hardwood partition at least 4 inches thick, separated by a laminated partition or equivalent. This standard remains basically unchanged from the proposed rule and addresses the need for careful storage of explosives and detonators as a basic precaution against damage and accidental detonation. Keeping explosives and detonators in either separate closed magazines or in the same closed magazine with the explosives and detonators separated by at least a 4-inch hardwood partition, a laminated partition or the equivalent minimizes the potential detonation of explosives in the event that the detonators are accidentally initiated.

Paragraph (c) requires that only explosives and detonators be kept in underground magazines and is substantially unchanged from the proposal. The proposed phrase "stored underground" is revised to read "kept underground" to clarify that explosive and detonator supplies be limited as prescribed by paragraph (a) of this section. Under the final rule, no materials other than explosives and detonators are to be kept in underground magazines. This standard prohibits the accumulation of empty packing material, combustible material and other items which could contribute to a fire or accidental detonation.

Paragraph (d) also remains unchanged from the proposed rule. It requires that magazines be substantially constructed and all interior surfaces be made of nonconductive material with no metal or other conductive material exposed inside. MSHA recognizes that metal exteriors have been effectively used to protect stored explosives and detonators from accidental detonation and damage. This rule permits the use of mobile magazines as well, provided that they meet the requirements of the final rule. A commenter also suggested that a provision be added to the final rule which would require all magazines to be immobilized while containing explosives. The commenter stated that all magazines must be stationary and in a known location outby the face to avoid the potential of equipment accidentally damaging a mobile magazine because of its unknown location. As discussed below, magazine locations are required to be posted with readily visible warnings to provide adequate notice of the location of explosives. These warnings on the magazine alert miners when magazines are moved to a new location. MSHA is not aware of any accidents regarding explosives and detonators in mobile magazines resulting from the magazine being either hit and damaged by mining equipment or by the magazine itself becoming a runaway piece of equipment. Most magazines are of skid-mounted type and are portable rather than mobile. Therefore, this recommendation is not adopted in the final rule.

Paragraph (e), which is consistent with both the proposal and the existing standard, requires that magazines be at least 25 feet from roadways and any source of electric current. Magazines must also be out of the direct line of the forces from blasting and be kept as dry as practicable.

One commenter suggested that all magazines be located at least 150 feet outby the last open crosscut. This suggestion has not been adopted. In MSHA's experience, the precautions of paragraph (e) provide a necessary and reasonable measure of protection against the hazards of an accidental explosion or other hazards involving explosives and detonators in magazines Locating the magazine 25 feet from any roadway will keep it out of areas of concentrated mine traffic where the magazine might be struck by equipment Keeping the magazine out of the direct line of the force of blasting protects the explosives supply from being damaged or accidentally initiated. When the magazine is kept as dry as practicable, damage to or deterioration of the explosives and detonators while they are stored in the magazine is minimized

Paragraph (f) requires that magazine locations be posted with indelibly marked, readily visible warnings indicating the presence of explosives. One commenter recommended that the warning be made of reflective material with lettering at least 6 inches tall and that these signs be located at all points where persons entering the area would pass. The warnings required by the fina rule must be indelible and sufficiently marked in a fashion that is readily visible, indicating the location of a magazine. This will require warnings that alert persons entering the area of the contents in the magazine, which is the purpose of this standard. The particular method by which this is accomplished, however is not specified in the final rule. Instead, the mine operator can determine how to appropriately label the warning signs.

Paragraph (g) specifies that only materials and equipment used in blasting such as blasting units, blasting cable, and tamping sticks can be stored at magazine locations. This is unchanged from the proposed rule. This provision differs from paragraph (c) in that it limits the items that can be stored in areas surrounding magazine locations while paragraph (c) limits the materials that can be stored inside an

underground magazine. Paragraph (g) does not permit the storage of combustible material or empty packaging at these locations. This will minimize the risk of fire and premature initiation of the explosives and detonators.

One commenter suggested that underground storage of explosives and detonators be prohibited in any mine that does not use explosives to produce coal on a regular basis. The commenter stated that this would eliminate deterioration of explosives and detonators when stored for a long period of time. When explosives and detonators are stored in accordance with the final rule, the incidence of deterioration will be minimized. However, when deterioration of the explosives and detonators does occur, the final rule specifies that they be removed from the mine. In addition, the Agency is not aware of any data which indicates that problems are being encountered in underground coal mines as a result of this practice. For these reasons, this suggestion is not adopted in the final rule.

Section 75.1313 Explosives and detonators outside of magazine.

The standards in this section are derived from existing §§ 75.1301, 75.1304, 75.1306 and 75.1307 except for paragraphs (a) and (c) which are new. They address the handling of explosives and detonators that are removed from magazines for use. These standards are not changed substantially from the proposed rule except for paragraph (a) which, although not in the proposal, was a new provision in the preproposal draft.

Paragraph (a) is a new requirement which limits the quantity of explosives that can be outside a magazine for use in a working section or other area where blasting is to be performed to 100 pounds except when more than 100 pounds of explosives are required to blast one round. In the latter situation, the amount necessary to blast one round may be outside of the magazine. These limitations were in the preproposal draft but were not included in the proposal. At least 10 fatalities have occurred where explosives being stored on mining equipment accidentally detonated when the coal face was blasted. Upon reconsideration of this accident data and in response to a comment urging that a limitation on the amount of explosives outside a magazine be specified, this provision has been added to the final rule.

In addition, when excessive quantities of explosives are outside of a magazine they are subject to being misplaced and run over by mining equipment. This limitation will protect against accumulation of explosives on a working section or other area of a mine. This will also lessen the severity of an accident involving premature detonation of explosives.

The 100-pound limitation is based on the fact that explosives are normally stored in 50-pound cases. An allowance of 100 pounds of explosives outside of a magazine is more than enough to blast a round of coal. In certain instances, such as when blasting rock overcasts, MSHA recognizes that more than 100 pounds of explosives may be necessary. Paragraph (a)(2) of this section allows an operator the needed flexibility to do blasting under those special circumstances.

Paragraph (b) requires that explosives and detonators outside a magazine that are not being transported or prepared for loading in boreholes be kept in closed separate containers made of nonconductive material with no metal or other conductive material exposed inside. The containers must be at least 15 feet from any source of electrical current, out of the direct line of the forces from blasting, in a location to prevent damage by mobile equipment, and kept as dry as practicable. This paragraph is unchanged from the proposed rule.

One commenter suggested deleting the requirement that explosives and detonators be kept as dry as practicable because virtually all explosives and detonators are water resistant. Water gel and emulsion type explosives are wrapped in plastic and may not be affected by water. However, some granular-type explosives are wrapped in paper cartridges which are subject to water deterioration.

The 15-foot distance which must be maintained between the explosives and detonators and any source of electric current has proven to be an effective distance in preventing accidental initiation. Keeping the detonators and explosives out of the direct line of the forces from blasting normally means keeping these materials out of the section or area where blasting is conducted. When the explosives or detonators are kept in a location to prevent damage by mobile equipment, the possibility of accidental contact which could initiate detonation is lessened.

Paragraph (c) is a new provision which requires that explosives and detonators not used during the shift be returned to a magazine by the end of the shift. This paragraph is unchanged from the proposed rule. One commenter suggested that MSHA clarify that the provision allows storage in a section magazine at the end of a shift and does not require that explosives and detonators be carried outside of the mine to the main magazine at the end of a shift. MSHA does not believe that any additionally clarification is needed. The regulation permits the operator to use either the section or the main magazine so long as it meets the requirements of these standards.

A commenter recommended that MSHA require only qualified persons to return unused explosives to a magazine at the end of the shift. MSHA has not adopted this recommendation because the primary concern addressed by the qualified person requirement is the safe use of permissible explosives. These type explosives are required to be kept in substantially constructed, enclosed containers until used and pose limited hazards to persons handling these containers. Consequently, a qualified person is not required for transporting explosives into or out of the mine or for removing explosives from a magazine. The Agency believes, that since similar circumstances exist when returning explosives to a magazine, the need for a qualified person to perform this task does not exist.

Section 75.1314 Sheathed explosive units.

This new section sets forth the conditions under which sheathed explosive units may be used in underground coal mines. Other general requirements in the final rule for transportation, storage and handling of explosives also apply to the sheathed explosive units. The sheathed explosive unit, which was developed by the Bureau of Mines, U.S. Department of the Interior, can be fired outside the confines of a borehole without presenting the hazard of igniting any flammable atmosphere which might be present underground. Existing standards currently prohibit the firing of any explosives in bituminous coal mines that are not confined in a borehole. Sections 75.1310 and 75.1315 of the final rule allow the use of sheathed explosive units and § 75.1314 sets forth requirements for their use. Situations where it may be advantageous from a safety standpoint to fire the sheathed explosive unit include dislodging loose roof slabs or coal or rock overhangs, roof fall leveling, and slab or boulder breaking.

One commenter recommended that the use of sheathed explosive units be prohibited. This commenter stated that permitting the use of sheathed units would allow unconfined shots to be fired in underground bituminous coal

mines resulting in a diminution of safety for the miners. Historically, the firing of unconfined shots has been prohibited. The sheathed explosive unit is designed to form a flame-inhibiting cloud upon firing of the unit. This cloud will prevent the flame created by firing of the explosive from igniting any explosive mixtures that may be present. The Bureau of Mines conducted numerous tests on its prototype sheathed explosive units to determine whether they would ignite explosive mixtures of methane or coal dust. During these tests the units were placed in a gallery containing explosive mixtures and fired. The firing of these units did not ignite any of the explosive mixtures. The tests conducted by the Bureau of Mines clearly show that sheathed explosive units can be used safely in underground coal mines, provided that the applicable provisions of this final rule are followed.

In addition, MSHA is issuing, concurrently with this final rule, approval requirements for sheathed explosive units. As previously discussed, sheathed explosive units must be approved by MSHA before they can be used in underground coal mines. These approval requirements are included in the revisions to 30 CFR Part 15.

Paragraph (a) of the final rule specifies that an instantaneous detonator must be used to fire each sheathed explosive unit. This paragraph remains essentially unchanged from the proposal, except the term "each" has been added to clarify that each sheathed explosive unit must be initiated by a separate instantaneous detonator for firing. The exclusive use of instantaneous detonators with sheathed explosive units protects against the hazards associated with sheathed explosive units being damaged by the earlier firing of an adjacent unit.

One commenter stated that short-delay detonators with the same delay periods could be used because the identical delays would ensure that the blast is essentially instantaneous. Tests conducted by the Bureau of Mines on short-delay detonators indicate that firing times for the same delay period can vary significantly. For example, a short-delay detonator with a designated delay period of 100 milliseconds could detonate in a time period ranging from 75 to 125 milliseconds. Therefore, if short-delay detonators are used in sheathed explosive units, one unit could fire before the others, thereby causing damage to the flame-inhibiting sheaths of adjacent units, and resulting in an ignition of coal dust or methane. Because of this potentially hazardous situation, the final rule specifies that instantaneous detonators be used when firing sheathed explosive units.

Paragraph (b) requires that a qualified person or a person working in the presence of and under the direction of a qualified person must prime and place the sheathed explosive units into position for firing. This paragraph also specifies that when priming a sheathed explosive unit the entire detonator must be inserted into the detonator well of the unit and be secured in place. Correct priming and placement of sheathed explosive units, like all other explosives, are crucial to safe performance. The final rule clarifies the proposal which specified that a person be under the immediate supervision of a qualified person. Under the final rule, when the sheathed explosive units are primed and placed by other than a qualified person, it must be done in the immediate presence of and under the direction of a qualified person.

The requirement in paragraph (b) regarding the method for priming the sheathed explosive unit appeared in the preproposal draft but not the proposed rule. Upon reconsideration, MSHA believes that because the sheathed explosive unit is relatively new, a requirement for how it is to be primed is necessary to reduce the hazards associated with improper detonator placement. Placing the detonator in the detonator well of the sheathed explosive unit initiates the explosive in the unit without damaging the sheath. Detonators improperly placed, could only partially detonate the explosive and damage the flame-inhibiting sheath. Damage to the flame-inhibiting sheath might then allow the explosive to ignite gas or dust in the mine atmosphere. The final rule also requires detonators to be secured in place to prevent movement of the detonator prior to initiation.

Paragraph (c) requires that sheathed explosive units not be primed until immediately before the units are placed where they will be fired. This paragraph is unchanged from the proposal. It addresses the hazard of prime sheathed explosive units being exposed in the underground mine environment for extended periods of time without being used, increasing the likelihood of accidental detonation. The priming of the sheathed explosive units is the last step in preparation of the explosives before the units are placed where they will be fired. The final rule minimizes the amount of time an explosive remains primed prior to firing.

Paragraph (c) requires that a sheathed explosive unit not be primed if it is damaged or deteriorated. The final rule revises the proposal which specified that a sheathed explosive unit not be fired if it is damaged or deteriorated. The final rule does not permit damaged or deteriorated sheathed explosive units to be primed. A qualified person will be able to visually inspect the sheathed explosive units before preparing them for detonation to determine if a sheathed explosive unit is damaged or deteriorated. Damaged or deteriorated sheathed units increase the potential for a misfire.

Paragraph (d) requires that rock dust be applied to the roof, ribs and floor within a 40-foot radius of the location where the sheathed explosive units are to be fired except in anthracite mines. This paragraph appeared in the preproposal draft but not the proposed rule. This application of rock dust helps protect against the hazards of float coal dust and coal dust being placed into suspension when the sheathed explosive unit is fired. In addition, it ensures that rock dust is applied in areas which are not covered by the MSHA requirement that generally addresses rock dust applications (30 CFR 75.402).

Paragraph (e) of the final rule provides that no more than three sheathed explosive units be fired at one time. This paragraph remains unchanged from the proposal. The use of three sheathed explosive units at one time should be adequate for application in underground coal mines. The simultaneous firing of three units is the maximum number of units that have been tested by the Bureau of Mines in an explosive atmosphere. These tests have shown that the proper firing of three units does not create an ignition hazard. One commenter, who had observed testing of sheathed explosive units by the Bureau of Mines, stated that in his opinion, three units provided ample rock breaking capacity to break the strongest strata associated with roof falls and excavation.

Paragraph (f) requires, as did the proposal, that sheathed explosive units not be fired if they are in contact with another sheathed explosive unit. This is in accordance with the test procedures used by the Bureau of Mines to determine the safety of firing sheathed explosive units. In addition, this will minimize the possibility that the concussion created by the firing of a unit will damage the flame inhibiting sheath of an adjacent unit and adversely affect the safety aspects of its performance.

Several commenters suggested that the term "sheathed explosive unit" be replaced with the phrase "explosives approved for unconfined blasting". They stated that the term "sheathed explosive

unit" may limit technological advances and prevent the use of devices that are as safe as sheathed explosive units. The term "sheathed explosive units" is used in the final rule primarily to distinguish them from other types of explosives and should not be interpreted as limiting the introduction of other devices designed to be fired outside of boreholes. The approval provisions in Part 15 and the requirements of § 75.1315 allow for the future introduction of other such explosive units approved by MSHA.

Section 75.1315 Boreholes for explosives.

This standard is derived from existing §§ 75.1300, 75.1302, and Part 15 except for paragraphs (d), (e), and (f) which are new. It addresses unconfined shots and the use, spacing and maintenance of boreholes. These requirements will minimize the occurrence of gas and coal dust explosions and misfires.

Paragraph (a) requires that all explosives fired in underground coal mines be confined in boreholes except sheathed explosive units and other explosive units approved by MSHA for firing outside the confines of a borehole and shots fired in anthracite mines for battery starting or blasting coal overhangs. The final rule revises the existing requirement by allowing the use of sheathed units and deleting the terms "mud caps and adobes". Unconfined shots continue to be prohibited by the requirement that explosives fired underground be confined in boreholes, except when firing sheathed explosive units or other explosive units approved by MSHA under Part 15.

When explosives are fired, they create sufficient flames to ignite coal dust and methane. However, if the explosives are stemmed in a borehole, the flame is confined in the borehole and cannot ignite any coal dust or methane that may be present. This same principle is true for sheathed explosive units which upon firing create a cloud of flame-inhibiting material and prevent the flames from causing an ignition.

One commenter recommended that battery starting in anthracite mines be accomplished with means other than the use of unconfined blasting to prevent exposing miners to unnecessary hazards. The final rule allows unconfined shots to be fired in underground anthracite mines for battery starting and when taking down coal overhangs. These practices have been performed in anthracite mines for many years. Unlike bituminous coal dust, anthracite coal dust is not explosive and therefore does not present the same hazard as bituminous coal dust. However, as with all blasting, § 75.1324 prohibits any round from being fired unless the methane concentration in the area is less than 1 percent volume.

The final rule also prohibits persons from going inside a battery to start the flow of material. This requirement, which is an existing provision, was inadvertently omitted from the proposed rule. The Agency believes that due to the severe hazard of being struck and or crushed by falling material which is associated with this practice, it must be specifically prohibited.

Paragraph (b) requires boreholes for explosives in coal to have a distance of at least 24 inches between the boreholes and between each borehole and any free face, unless the height of the coal seam does not permit such spacing. This revises the existing standard which requires a burden of 18 inches in all directions. MSHA's experience, as well as that of several commenters, has shown that this language is subject to a variety of interpretations and leads to confusion. Therefore, the phrase "burden * * * in all directions", as used in existing Part 15, is deleted in the final rule.

Research conducted by the Bureau of Mines has indicated that, in order to minimize the potential for desensitization of explosives being fired in coal, a minimum spacing of 24 inches is necessary. The shockwaves created by the firing of explosives in a borehole can compress the explosives in an adjacent borehole if the spacing is less than 24 inches. When explosives are compressed, their density is changed and the likelihood of a misfire is significantly increased. Results of research conducted by the Bureau of Mines indicates that misfires occur approximately 50 percent of the time when the separation between boreholes is only 18 inches. The occurrence of misfires was significantly reduced when the spacing between the boreholes was increased to 24 inches.

Several commenters stated that a 24-inch spacing of boreholes would be too great a distance when blasting rock in combination with coal (middle man). They stated that such spacings would result in oversized rocks and reduce the overall effectiveness of the shot. Some of these commenters recommended that the existing 18-inch spacing be retained, while others recommended that a provision be added which would allow District Managers to permit distances less than 24 inches.

Paragraph (c) has been added to the final rule to address the concerns of these commenters. It requires boreholes in rock to be at least 18 inches from any other borehole in rock, at least 24 inches from any borehole in coal, and at least 18 inchres from any free face. This recognizes that rock is a harder material than coal and the distance between boreholes necessary to prevent desensitization of explosives is less. However, when a combination of rock and coal are blasted simultaneously, any borehole in rock must be at least 24 inches from any borehole in coal.

Paragraph (d) prohibits a borehole that has at any time contained explosives from being used to start any other hole. This provision addresses the hazard of accidentially drilling into undetonated explosives or detonators remaining in a previously loaded borehole. Miners have been fatally injured while drilling into holes that contained misfired explosives.

Paragraph (e) requires that when blasting slab rounds off the solid, the opener holes not be drilled beyond the rib line. Boreholes drilled beyond the rib line can result in overburdened shots which contribute to the ocurrence of blown-out shots and an increased risk of methane and dust ignitions.

Paragraph (f) provides that when coal is cut for blasting, the coal must be supported if necessary to maintain the stability of each borehole to be loaded with explosives. This provision appeared in the preproposal draft, but was not in the proposal. A commenter objected to this deletion because boreholes may collapse after being loaded. Boreholes which collapse or are otherwise affected by sagging or collapsing of cut coal can result in unconfined or blown-out shots. For example, if explosives are loaded into boreholes in a working place which has been undercut to a depth of 10 feet and the first 3-foot distance of the cut then sags or collapses, the explosives may be separated from the stemming material allowing the shots to be fired unconfined. A common practice for supporting the coal in such situations is placing a few blocks of wood in the undercut area of the face. Therefore, MSHA has revised the final rule to include this requirement.

Section 75.1316 Preparation before blasting.

This final rule is derived from existing § 75.1307 and Part 15, except paragraph (d) which is new. This section sets forth the requirements for deenergizing or removing electric equipment and determining the depth and direction of boreholes. It also identifies situations when explosives are not permitted to be loaded in boreholes. It address the hazards of premature detonation of the explosives being placed in boreholes.

Paragraph (a) requires that before priming explosives, all mobile electric equipment be removed to a distance of 50 feet from the working place or any other area where blasting is to be performed. This paragraph also requires that stationary electric equipment within 50 feet of these areas be deenergized. Failure to deenergize these sources increases the risk of accidental initiation of detonators and explosives by stray electric current.

The 50-foot distance for mobile and stationary electric equipment was added to the final rule in response to a commenter who stated that some clarification was necessary to provide guidance to the mining industry as to what equipment should be removed or deenergized. This commenter was concerned that the proposal would be open to a variety of interpretations including the complete deenergization of all electric equipment on a producing section and that such a procedure is not necessary to maintain safe blasting practices. The 50-foot distance, which is an accepted minimum distance used in the coal and metal and nonmetal mining industries, minimizes the potential of premature detonation.

Paragraph (b) specifies that before loading boreholes with explosives, each borehole must be cleared and its depth and direction determined. This provision addresses two primary concerns. First, coal dust created during drilling of the boreholes must be removed from the hole. Otherwise the coal dust can get between the explosive cartridges and prevent the entire explosive train from detonating. The second concern is that the qualified person know the amount of explosives in each borehole based on its depth and that adequate space is provided between each borehole. Determining the depth and direction of each borehole provides sufficient information for making these determinations. Boreholes with excessive amounts of explosive or inadequate spacing of boreholes has resulted in numerous blown-out shots and misfires.

One commenter suggested that a wooden tamping pole or other nonconductive tool be used to clear boreholes and to determine their depth and direction. This commenter stated that only nonsparking tools should be used in preparing boreholes or at any other stage of the blasting process. While a wooden tamping pole is normally used in determining these factors, the use of metallic tools does not present a hazard when clearing boreholes prior to loading explosives and should not be prohibited. At this initial state of the blasting process, there is no danger involved with the borehole because if has not yet been loaded with explosives. However, § 75.1318(g) of the final rule requires that only a nonconductive, nonsparking pole be used when loading explosives into the boreholes and when tamping the stemming material.

Paragraph (c) prohibits loading of explosives into boreholes that are drilled beyond the depth of cut coal unless the portion of the borehole deeper than the cut is filled with noncombustible material. Cut coal provides a second free face for the explosives to break the coal down. Firing explosives in boreholes drilled beyond the depth of cut coal increases the risk of blown-out shots and methane or dust ignitions.

One commenter suggested that only clay dummies or water stemming bags be used to fill the portion of a borehole that has been drilled beyond the limits of a cut. This commenter stated that clay or water would be compatible with the boreholes, while other noncombustible materials possibly would not. The purpose of filling the space beyond cut coal is to prevent explosives from being loaded into that portion of the borehole. Therefore, noncombustible materials other than clay or water could also serve this purpose.

Paragraph (d) requires that when two working faces are approaching each other, cutting, drilling or blasting be done at only one working face at a time if the two faces are within 25 feet of each other. Therefore, if a developing crosscut is being mined from both sides, mining operations must be conducted on only one side at a time when the distance between the two working faces is 25 feet or less. This requirement protects against accidental initiation of explosives by preventing cutting or drilling in an approaching working face from coming into contact with boreholes containing explosives on the opposite side. It also guards against blasting breaking through to another area where people are working.

One commenter recommended that this provision apply only during preparation for blasting to avoid possible misinterpretation of the provision. The intent of the provision is to limit any activity related to cutting, drilling, or blasting to only one side when two approaching faces are within 25 feet of each other. This requirement minimizes the potential of premature detonation and also minimizes the number of persons subject to such hazard.

A provision which appeared as paragraph (c) in this section of the proposed rule that addressed the type of work that could be performed when loading boreholes has been moved to § 75.1318 in the final rule.

Section 75.1317 Primer cartridges.

This new standard sets forth requirements for primer cartridges. A primer cartridge is an explosive cartridge with a detonator inserted in one end. Improper makeup of the primer cartridge can adversely affect the reliable detonation of explosives and contribute to the occurrence of misfires, creating safety hazards.

Paragraph (a) requires that primer cartridges be primed and loaded only by a qualified person or a person working in the presence of and under the direction of a qualified person. This requires the qualified person to be in the immediate presence of the person priming explosive cartridges at all times that this work is being performed. Since the hazards associated with explosives and detonators are greatly increased when the two are joined together, a person who is competent and knowledgeable must be present to ensure that proper procedures and precautions are followed.

Paragraph (b) prohibits the priming of cartridges until immediately before they are loaded in boreholes. An explosive cartridge primed with a detonator is very sensitive and subject to accidental detonation. Therefore, the time in which an explosive is allowed to remain primed prior to firing must be minimized.

The proposed rule did not contain certain requirements that were in the preproposal for priming explosive cartridges since they would be prepared by a qualified person proficient in the proper techniques for the performance of these tasks. However, MSHA accident data shows that failure of the blaster to follow safe blasting practices or regulations was a contributing factor in over 80 percent of the fatal blasting accidents from 1978 through 1984. Upon further consideration of this information, MSHA has determined that blasters require more specific guidance in the safe handling and use of explosives. Moreover, commenters did not object to the inclusion of specific instruction on priming in the preproposal. Therefore, paragraphs (c) and (d) have been added to the final rule.

Paragraph (c) specifies that only a nonsparking punch be used when priming explosive cartridges. This specification, appearing in the preproposal draft as nonferrous, was not

in the proposal. The use of a sparking-type punch could create a spark sufficient to cause premature detonation of an explosive. Therefore, only nonsparking punches are permitted.

Paragraph (d) requires detonators to be completely within and parallel to the length of the explosive cartridge and to be secured by half-hitching the leg wires around the cartridge or by an equally effective method. This provision, which was in the preproposal draft, was not in the proposal. Because placement and alignment of detonators in the explosive cartridge is necessary for safe and effective blasting, the Agency addresses these factors in the final rule. Detonators not properly inserted into the explosive cartridge can cause misfires. If a detonator protrudes through the explosive cartridge wrapping and is initiated, the full energy from the fired detonator will not be transmitted to the explosive cartridge and a misfire can occur. Securing the detonator by half-hitching the leg wires around the cartridge keeps the detonator in position while the cartridge is being loaded into the borehole. The use of the half-hitch knot or loop around the cartridge is standard industry practice for securing the detonator. However, the final rule permits other equally effective means of securing the detonators.

Section 75.1318 Loading boreholes.

This section is derived from existing provisions in Part 15, except for paragraphs (a), (c), (d), and (e) which are new. These standards address the procedures for loading boreholes which directly affect the performance of the explosive. Improper loading can contribute to misfires and blown-out shots.

Paragraph (a) provides that explosives must be loaded in boreholes only by qualified persons or persons working in the presence of and under the direction of a qualified person. This requirement addresses the risk of explosives being mishandled at this important phase of the blasting process by untrained persons.

Paragraph (b) requires that when boreholes are being loaded no other work except that necessary to protect persons be done in the working place or other area where blasting is to be performed. This practice reduces the risk of accidental detonations and the number of persons exposed to this hazard in the blasting area. This standard appeared in § 75.1316 in the proposal.

Paragraph (c) addresses procedures for loading boreholes drilled upward in solid rock or long holes drilled upward in anthracite mines. A commenter suggested that pushing all the cartridges to the back of the borehole in a continuous column be restricted to holes that are inclined at an angle of less than 45 degrees from the horizontal. This commenter stated that when loading vertical holes overhead in rock, it would be impossible to load all cartridges in a continuous column. MSHA recognizes that alternative means are necessary to maintain contact between cartridges of explosives in certain circumstances such as vertical boreholes in rock and when drilling long holes upward in anthracite mining. In these cases, some slitting and tamping may be necessary to ensure contact between cartridges and to prevent gaps or separations in the column which could result in misfires. Such slitting and taping will not be considered as damaging the explosives as prohibited by paragraph (e) below. Therefore, the final rule includes alternative means to provide a continuous column of explosives under these circumstances.

Paragraph (d) requires that when loading boreholes the primer cartridge be the first cartridge loaded in the borehole, that the end of the cartridge containing the detonator face the back of the borehole and that the primer cartridge and other explosives be pushed to the back of the borehole in a continuous column with no cartridge deliberately crushed or deformed. Inserting the primer cartridge into the borehole first with the detonator toward the back of the borehole places initiation of the explosives at the point of greatest burden which decreases the potential for blown-out shots. Pushing the explosives to the back of a borehole in a continuous column minimizes gaps and voids between cartridges and damage to them which can interrupt detonation of the column of explosives and result in misfires.

In response to the proposed rule, one commenter suggested that the continuous column be accomplished with no explosive cartridge being crushed. The Agency agrees that explosive cartridges should not be crushed when loading boreholes for blasting coal in bituminous coal mines. Bureau of Mines research conducted in 1949 (Technical Paper 716) shows that crushing explosive cartridges to fill a borehole increases the risk for ignition of methane during blasting as compared to loading cartridges in a continuous train without crushing. In a bituminous coal mine the coal dust is explosive and methane face ignitions have a potential for initiating an ensuing mine-wide coal dust explosion. On the other hand, the risk of a methane or coal dust ignition is greatly reduced when blasting rock. Moreover, anthracite coal dust is not explosive and will not propagate an explosion.

Paragraph (e) prohibits an explosive from being loaded into a borehole if it is damaged, deteriorated or incompletely filled. Using explosives that are not in their approved condition increases the risk of misfires and inadequate performance of explosives.

One commenter suggested that the words "incompletely filled" be deleted. This commenter stated that it is impossible to know if a cartridge is incompletely filled without cutting open the cartridge and examining the contents and thereby damaging, deforming or changing the specifications of the cartridge before firing it. The commenter further stated that it is the explosive manufacturer who has the responsibility for ensuring that a cartridge is completely filled, not the qualified person. MSHA agrees that the manufacturer is primarily responsible for ensuring that the explosives are manufactured as approved, which includes completely filling each explosive cartridge. However, should some incompletely filled products be inadvertently distributed by the manufacturer, those cartridges must not be used.

Incompletely filled cartridges are easily identifiable by visual inspection and by feeling the cartridge in the hands while loading. When an incompletely filled cartridge is squeezed, there is too much play in the material. Also, water gels and some emulsion explosives are in flexible plastic cartridges, and the qualified person can see the amount of material in these types of explosives, as well as feel it. Therefore, this suggestion has not been adopted in the final rule.

Paragraph (f), derived from Part 15, prohibits explosives of different brands, types or cartridge diameters from being loaded in the same borehole. Because of the sensitivity variations of different types of explosives, the use of different types or sizes of explosives in the same borehole can contribute to the occurrence of misfires.

Several commenters recommended that this paragraph be deleted. These commenters stated that all explosives must pass approval tests so that a mixing of products should not cause problems which would not otherwise occur. During the approval process for explosives, tests are conducted to ensure that cartridges of the same diameter and from the same manufacturer will propagate a detonation properly. Propagation is concerned with the rate at which detonation proceeds down a cartridge.

Different cartridge brands and size have different individual characteristics. When cartridges of the same brand are used together, a predictable result can be obtained which ensures continuous and uninterrupted propagation. No test research has been done to determine whether a mix of cartridge types and diameters can also propagate a detonation properly. Therefore, to ensure a continuous rate of detonation, explosive products must not be mixed.

Paragraph (g) requires that only nonconductive, nonsparking tamping poles be used for loading and tamping boreholes. This requirement, which is derived from existing Part 15, was not in the proposed rule. Commentors recommended that the existing term "nonmetallic" be changed to "nonferrous". The final rule uses the terms "nonconductive" and "nonsparking". The use of these types of tamping poles eliminates the potential for creating sparks that could cause premature detonation. The use of nonsparking connecting devices for extendable tamping poles is permitted by this standard.

In the proposed rule, this section also addressed the use of explosives that are below the approved minimum product firing temperature. Under the final rule, the minimum product firing temperature of explosives is addressed in § 75.1310.

Section 75.1319 Weight of explosives permitted in boreholes in bituminous and lignite mines.

This standard is derived from existing Part 15 and addresses the amount of explosives permitted when blasting coal, coal with rock partings, or fallen rock in bituminous or lignite mines. The use of explosives in excess of the stated limitations can result in excessive flame, coal dust, and methane being released into the mine atmosphere, creating the hazard of a methane or coal dust ignition. Excessive amounts of explosives can also contribute to the occurrence of cut-off shots in adjacent holes.

Paragraph (a) retains the existing 3-pound limit on explosives used in boreholes to blast coal, including coal with rock partings and fallen rock. Several commenters recommended that these requirements not be applicable when blasting fallen materials composed of rock and its surrounding coal strata outby the last open crosscut. While the hazards associated with blasting fallen material outby the last open crosscut may not be as great as in the face area, they still exist. For example, if coal dust and float coal dust present in these blasting areas are placed into suspension by the concussion from the blast, these materials can be ignited by flames caused by the use of excessive explosives. The Agency anticipates that sheathed explosive units will be used in the future to blast the vast majority of fallen material.

As in the existing standard, the final rule does not apply when blasting solid rock in its natural deposit. Blasting solid rock in its natural deposit can require explosives in excess of 3 pounds per borehole to properly blast the rock. Blasting solid rock with an insufficient amount of explosives can result in rock overhangs and loose roof which increase the hazards associated with cleaning up and supporting the area that has been blasted. In addition, the potential for an ignition of coal dust or methane is significantly less than when blasting coal. The proper amount of explosives per borehole depends on the specific circumstances involved. A commenter recommended that the proposed phrase "solid rock in its natural deposit" be replaced with the phrase "rock without mineable coal". This commenter stated that the proposed phrase could be misinterpreted to include sulfur balls and middle man in the coal face. The final rule is consistent with the existing regulation. MSHA is unaware of this provision being misinterpreted in the past.

Paragraph (b) requires a reduction in the weight of explosives by ½ pound for each foot of borehole less than 6 feet.

Section 75.1320 Multiple-shot blasting.

This standard is new, except for paragraph (a) which is derived from § 75.1303, and addresses requirements for detonator use and placement in multiple-shot blasting. Improperly fired multiple-shot blasts can result in blown-out and cut-off shots, both of which have resulted in the ignition of coal dust or methane.

Paragraph (a) prohibits mine operators from firing rounds containing more than 20 boreholes unless permitted in writing by the District Manager under § 75.1321. This provision addresses the hazard of firing more than 20 boreholes in a round which can release additional methane, generate more float coal dust and fumes, and create an increased potential for an explosion. MSHA received no objections to a specific 20-shot limitation in the preproposal draft. On the proposed rule, which was less specific, one commenter stated that 60 shots should be the limit for a round while other commenters stated that a 20-shot limitation should be specified for blasting coal. Most coal production blasting is done with 8–12 shots, with the number of shots varying according to the height or width of the coal. The need for blasting more than 20 boreholes more frequently occurs in development or construction work in rock, which would be permitted under § 75.1321.

Paragraph (b) prohibits instantaneous detonators and delay detonators from being used in the same blasting circuit in any underground coal mine. This practice, which would not have been specifically prohibited by the proposal, was added to the final rule in response to the recommendation of numerous commenters. These commenters pointed out, and MSHA agrees, that because of the different firing characteristics and firing times of instantaneous and short-delay detonators, the likelihood of misfires and the potential for blown-out shots is significantly increased when they are used in the same circuit.

Paragraph (c) is applicable to bituminous and lignite mines and specifies that only detonators with delay periods of 1,000 milliseconds or less be used when blasting in these mines. This constitutes an editorial change to conform to the definition of short-delay detonators and permits the use of instantaneous detonators. These are the only types of detonators that have been used in recent years and have proven to be safe and effective. They control the total elapsed blasting time of a round while minimizing the possibility of a methane or coal dust explosion.

A commenter suggested that the use of instantaneous detonators be prohibited. This commenter stated that short-delay detonators should be required in all mines and if exceptions are needed, a variance could be granted by the District Manager. The vast majority of detonators that will be used underground will be short-delay. However, as previously discussed, instantaneous detonators are required to be used when firing sheathed explosive units. They may also have some application when blasting rock. Instantaneous detonators can be safely used in these situations and to require that the use of instantaneous detonators be approved by the District Manager will create an unnecessary paperwork burden on the mining industry.

Consistent with this approach, the proposed requirement that short-delay detonators be used for multiple-shot blasting in anthracite mines when required by the District Manager is not included in the final rule. Upon further review, the Agency has determined that short-delay detonators are not typically used in anthracite mines and the need for their use in the foreseeable future is limited. Because of the different

characteristics of the coal seams, mining methods, and blasting techniques used in anthracite mines, long-delay detonators and instantaneous detonators are more appropriate for multiple-shot blasting. MSHA has no data or information to indicate that this practice is unsafe. However, as discussed above, instantaneous and delay detonators cannot be used in the same blasting circuit.

Currently, the total elapsed blasting time for short-delay electric detonators used in underground coal mines is limited to 500 milliseconds. However, research conducted by the Bureau of Mines, in conjunction with MSHA, has provided evidence that this time period can be extended to 1,000 milliseconds without increasing the risk of a methane or coal dust explosion. Accordingly, the final rule defines "short-delay detonator" as a detonator with a designated delay period of 25 to 1,000 milliseconds.

Paragraph (d) requires that each borehole in a round be initiated in sequence from the opener hole or holes in anthracite mines. The provision was in the preproposal draft and not in the proposal. Upon reconsideration, the Agency has determined that this is an important factor for blasting in anthracite mines and thus, it is addressed in the final rule. Since an opener hole is the first hole fired, it creates a second free face to provide additional relief for the remaining boreholes. This requirement provides for an orderly, controlled blast and prevents blown-out shots, cut-off shots and structural damage to the rib, roof, or ventilation system on steeply pitching seams.

Paragraph (e) addresses arrangement of detonator delay periods when blasting in bituminous and lignite mines. For blasting cut coal, this provision requires the first shot fired in the round to be initiated in the row nearest the kerf or shear. A kerf is a horizontal cut that is created by removing the coal near the bottom of the coal face with a cutting machine. On the other hand, a shear is a vertical cut that is created by removing a portion of the coal near the middle of the coal face or along each side. Both kerfs and shears provide a second free face for relief of the coal when the explosives are fired.

Paragraph (e)(1)(ii) addresses the interval between the designated delay periods of successive shots when blasting cut coal. The provision requires the interval to be at least 50 milliseconds, but not more than 100 milliseconds. The proposed requirement did not establish a range for the interval although the preproposal did specify such a range for sequential firing.

The interval between the designated delay periods of successive shots is an outgrowth of previous experimental research work conducted by the Bureau of Mines on multiple shot short-delay blasting. The interval established in this section of the rule is also supported by research performed in Great Britain and Western Europe and is a published recommendation of the Institute of Makers of Explosives. The research work has been published in International Conferences of Directors of Safety in Mines Research and in formal Bureau of Mines publications which are in the public domain. Establishing an upper limit of 100 milliseconds during sequential firing reduces the potential for ignition of gas or dust liberated during the firing of each successive shot. It also minimizes the potential for ignition from cut-off shots. The absence of an upper limit increases the probability of an explosion caused by explosives not being properly confined in a borehole and thus firing in a flammable atmosphere. Based on this technical data, MSHA has added this requirement to the final rule.

Paragraph (e)(2) addresses the arrangement of detonators and the interval between the designated delay periods of successive shots when blasting coal off the solid. When blasting coal off the solid, the provision requires each shot in the round to be initiated in sequence from the opener hole or holes. The firing of shots in sequence establishes a free face for successive shots, thereby reducing the potential for a blown-out shot. The required interval between successive shots when blasting coal off the solid is also based on experimental work by the Bureau of Mines in short-delay blasting.

Several commenters recommended the prohibition of blasting coal off the solid. Two multiple fatal blasting accidents were cited as justification for the prohibition. These commenters stated that blasting off the solid is a known hazard which is not economically justified. However, the Agency does not prohibit blasting off the solid in the final rule. Requirements in the final rule are directed to conducting blasting off the solid in a safe manner. The requirements control the amount of explosive used, provide for proper stemming and tamping, address placement of boreholes, regulate the sequence of firing, specify intervals between shots, and place a limitation on total elapsed blasting time not to exceed 1,000 milliseconds. In addition, the final rule contains more stringent requirements for the qualified persons who handle and use explosives. The Agency's investigation of the Adkins Coal Company explosives accident on December 7, 1981, and the FHR Coal Company explosives accident on January 20, 1982, which together resulted in 15 fatalities, revealed that although the technique of blasting coal off the solid was employed at these two mines, multiple violations of MSHA standards relative to the safe use of permissible explosives were cited as the cause of these accidents.

Section 75.1321 Permits for firing more than 20 boreholes and the use of nonpermissible blasting units.

This provision clarifies existing § 75.1303–1 which allows District Manager approval for firing more than 20 boreholes in a round and the use of nonpermissible blasting units. MSHA's experience has shown that mine operators have utilized it to obtain permits to use nonpermissible blasting units to fire large numbers of boreholes during construction blasting in rock. The removal of this provision from the proposal was based primarily upon the belief that permissible blasting units would be available to meet the mining industry's needs. However, MSHA has determined that, at this time, permissible blasting units do not have sufficient capacity to perform all development and construction blasting required by the industry. Therefore, the provision in the existing rule that permits the District Manager to authorize the firing of more than 20 boreholes per round and to use nonpermissible blasting units has been retained with minor editorial revisions, in the final rule.

Section 75.1322 Stemming boreholes.

This proposal is derived from existing § 75.1303 and Part 15, except paragraphs (b), (c), (f), (g), and (h) which are new. It sets forth procedures and requirements for stemming boreholes. Stemming in boreholes acts to suppress the flames during blasting. Failure to properly stem boreholes can result in blown-out shots.

Paragraph (a) requires only noncombustible material to be used for stemming boreholes. A commenter recommended deletion of the word "noncombustible" stating that the terminology would have allowed rock dust and wet sand bags to be used as stemming. It was also recommended, that stemming materials be restricted to clay and water. The final rule, like the existing provision, requires noncombustible material for stemming. Restricting use to clay and water would

limit the type of stemming material and not permit use of materials that could be as equally effective.

Paragraph (b) specifies that stemming material, except water bags, must be tamped to fill the entire cross-sectional area of the borehole. This requirement was not contained in the proposed rule but was included in the preproposal draft. Upon further review by the Agency, specific language is included in the final rule to require the tamping of stemming materials to fill the entire cross-sectional area of the borehole. Stemming material must be tamped to prevent flames from escaping when a borehole is fired.

Paragraph (c) requires that the stemming materials in each borehole contact the explosive cartridge nearest the collar of the borehole. Space or gaps between the stemming material and the explosives can significantly reduce the effectiveness of stemming in confining the flames generated by the initiation of explosives.

Paragraphs (d) and (e) specify the minimum amounts of stemming material to be used based on the depth of the borehole. Experience has shown these minimum amounts to be adequate for confining the flame generated by the initiation of explosives. When clay dummies, moist sand, loose clay, or other noncombustible materials are used for stemming, the specified depth of stemming in the borehole must be the depth after tamping.

Paragraph (f) specifies that only pliable clay dummies be used for stemming when blasting off the solid in bituminous and lignite mines. The preproposal provision would have prohibited the use of water stemming bags when blasting coal off the solid. This requirement was not in the proposal. In lieu of only allowing blasting off the solid where permitted by the District Manager, as required in the preproposal, the final rule instead provides stringent requirements for controlling this practice. One of these is the requirement that only pliable clay dummies be used as stemming when blasting off the solid which has been included as recommended by commenters. The use of pliable clay dummies provides additional resistance against blown-out holes which may result in a methane or coal dust ignition.

Paragraph (g) requires that the diameter of a water stemming bag and the diameter of the drill bit used to drill the borehole be within ¼ of an inch. The primary purpose of a water stemming bag is to provide a wall of water within the borehole to confine flames generated by the initiation of the explosives. The Bureau of Mines and MSHA have determined through tests that a spacing of not more than ¼ of an inch between the water stemming bag and the walls of a borehole allows the water to form a complete wall within the borehole and prohibits the flames from escaping into the mine atmosphere. However, tests have not been conducted on spacings greater than ¼ of an inch and therefore the rule limits the spacing to a known safe value.

Paragraph (h) sets forth those performance characteristics for tear- and flame-resistance of water stemming bags which are commercially available for use in underground coal mines. The preproposal specified that water stemming bags be approved by MSHA, but this provision was not included in the proposal. In the absence of approval requirements, the Agency added the performance characteristics of flame resistance and tear resistance in the final rule so that safe water stemming bags will be provided for use when blasting cut coal. The flame resistant property reduces the fire hazard of a water stemming bag that is shot out of a borehole into a flammable atmosphere during blasting. The tear resistant property minimizes the potential for a water bag to rip or lose its water holding capability while used to stem a borehole. The inclusion of these performance characteristics in the final rule is in response to comments which stated that the proposed rule would have permitted the use of untested systems.

Section 75.1323 Blasting circuits.

The final rule is derived from existing Part 15, except for paragraphs (b), (f), (g), (h), (i) and (j), which are new. The final rule establishes the requirements for the use and protection of blasting circuits, including the blasting cable. To ensure reliable detonation of explosives and to reduce the risk of misfires and premature or unplanned detonation, devices used in the blasting circuit must be appropriate for their intended purpose and properly maintained.

Paragraph (a) requires blasting circuits to be protected from stray electric current. Blasting circuits can become energized by extraneous sources of electricity and protection is necessary to prevent premature initiation of the explosives.

One commenter stated that static electricity is a form of extraneous electricity and should be added to the rule. MSHA agrees that static electricity is a form of stray electricity. However, the Agency has not specifically added "static electricity" to the rule because it is considered to be only one form of stray electricity and is covered by the provisions of the final rule.

Paragraph (b) prohibits the use of detonators made by different manufacturers in the same blasting circuit. Due to sensitivity variations and firing characteristics among detonators, the combining of detonators made by different manufacturers can result in misfires. No objections were raised by commenters to this provision.

Paragraph (c) requires detonator leg wires to be kept shunted until connected to the blasting circuit. As suggested by commenters, the wording of this paragraph has been modified for clarity. When leg wires are not shunted, the detonator is subject to initiation by extraneous electricity. Detonator leg wires are shunted when received from the manufacturer and must remain so until connected into the blasting circuit.

Paragraph (d) requires blasting cables to be well-insulated copper wire of a diameter size not smaller than 18-gauge and long enough to permit the round to be fired from a safe location. In response to a comment seeking clarification concerning the size limitation of the wire gauge, the final rule specifies that the wire diameter be not smaller than 18-gauge. The final rule sets a minimum standard for blasting cable compatibility with the size of capacity of permissible blasting units. Blasting cable lengths must permit the firing of the blast from a safe location that is around at least one corner from the blasting area.

One commenter recommended that the blasting cable be at least 125 feet in length. The commenter objected to the proposed rule because it did not designate a minimum length of blasting cable and, as a result, thought shot firers would be encouraged to shoot from an unsafe location. In response to the commenter, the final rule specifies that the cable be of a sufficient length to reach around one corner from the blasting area. This provides a physical barrier between the blasting area and the shot firer.

Paragraph (e) requires blasting cables to be shunted until immediately before the blast is fired, except when testing for circuit continuity. The connection of the blasting cable to the blasting unit before the round is ready to be fired significantly increases the risk of accidental initiation.

Paragraph (f) requires that wire used between the blasting cable and the detonator circuitry be well-insulated, have a resistance no greater than 20-gauge copper wire, and be not more than 30 feet long. These requirements prohibit the use of wire that is damaged or has a

resistance that may be inconsistent with the capabilities of the blasting unit.

One commenter recommended that the proposed rule increase the resistance from that of 20-gauge copper wire to 18-gauge copper wire based on a calculation that the increased resistance would reduce the current flow adversely affecting the result of the blast. In the final rule, the Agency has specified the wire between the blasting cable and detonator circuitry be not more than 30 feet long and have a resistance no greater than 20-gauge copper wire. The difference in the resistance of 18- and 20-gauge copper wire is insignificant (less than ¼ ohm) for a wire length of 30 feet and therefore the current flow would not be reduced sufficiently to adversely affect the result of the blast.

Paragraph (g) requires that all connections in the blasting circuit be properly spliced and sufficiently separated from other connections to prevent accidental contact or arcing. Poor connections increase the resistance of the blasting circuit. Connections that are too close together or contact each other can result in arcing and or short circuiting and increase the potential for a misfire.

Paragraph (h) requires that uninsulated connections be kept out of water and away from the coal, roof, ribs and floor. The term "bare" has been changed to "uninsulated" for clarity. Failure to protect uninsulated connections can result in loss of electric current through grounding, increasing the potential for misfires. A commenter suggested that these connections also be required to be kept "clean and shiny". The Agency has not adopted the commenter's suggestion since the rule also requires that all blasting circuits be tested for continuity, which will indicate the presence of proper circuit connections and continuity.

Paragraph (i) requires blasting circuits to be wired in a single series when 20 or fewer boreholes are to be fired in a round. This ensures that the resistance of the blasting circuit is compatible with permissible blasting units. One commenter suggested the wording be changed to "all holes to be wired in a 20 or fewer shot series" as opposed to "when 20 or fewer shots are fired in a round". This comment is not adopted in the final rule in order to maintain consistency with the definition of "round".

Paragraph (j) requires that blasting circuits be checked for circuit continuity and resistance using a blasting galvanometer or other instrument specifically designed for testing blasting circuits. This provision differs from the proposal which did not require that blasting circuits be checked for continuity and resistance but only required that certain instruments be utilized if checks for continuity were made. Two of the known causes of misfires are the lack of continuity or excessive electrical resistance in the blasting circuit. MSHA's field experience and assessment of factors and causes of blasting accidents are indicative of the need to check continuity and resistance to prevent misfires during blasting. Review of published recommendations from the Bureau of Mines and British research, recommendations published by the Institute of Makers of Explosives and industry-wide comments regarding the absence of this requirement in the proposed rule support this provision. MSHA has, therefore, modified this rule to require that blasting circuits be tested with a proper instrument for continuity and resistance. This provision minimizes the potential for misfires and eliminates the possibility of accidental initiation of explosives through use of improper checking devices which can carry excessive current capacity. This provision is consistent with circuit testing requirements for metal and nonmetal mines in 30 CFR 56.6121 and 57.6121.

Section 75.1324 Methane concentration and tests.

This standard was in the proposed rule and is derived from existing §§ 75.320 and 75.1302. It addresses methane concentrations and tests in areas where explosives are to be fired. Blasting in areas which contain explosive concentrations of methane can cause mine explosions.

Paragraph (a) prohibits blasting in any area that contains 1.0 volume percent or more of methane. While a one percent concentration of methane in air is not explosive, it is recognized throughout the coal mining community as the level at which steps must be taken to remove the methane.

Paragraph (b) requires that tests for methane be made immediately before shots are fired and that these tests be made by a person qualified to conduct such tests. Methane tests made immediately before the shots are fired provide a warning of methane concentrations at or above 1.0 volume percent.

One commenter recommended the addition of a new provision that would require rock dust to be applied to all surfaces from the face for at least 40 feet in all directions. The commenter stated that the existing standards do not require rock dusting to the face but would permit rock dusting to stop 39 feet from the face. The commenter added that the area surrounding the blast is the critical area that needs the rock dust. The Agency's current regulations in § 75.402 specify that all underground areas of a coal mine be rock dusted to within 40 feet of all working faces. Also, § 75.401 specifies that in working places, particularly in distances less than 40 feet from the face, water, with or without a wetting agent, or other no less effective method must be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the explosion hazard. The Agency has not found these safety requirements to be inadequate and, therefore, has not adopted the commenter's recommendation to require application of rock dust to all surfaces from the face for at least 40 feet in all directions.

Section 75.1325 Firing procedure.

This standard sets forth the procedures to be followed when firing explosives. It is derived from existing Part 15 except for paragraph (b) which is new.

Paragraph (a) requires that shots be fired only by a qualified person or a person working in the presence of and under the direction of a qualified person.

Paragraph (b) limits blasting in a working place to one face at a time. One commenter recommended deleting the proposed exception which would have permitted blasting up to three faces in a single working place. The final rule does not allow blasting more than one face at a time. Simultaneous firing of more than one face at a time can release additional methane, generate more dust and fumes, and create a greater potential for an explosion hazard. Another commenter stated the proposal, should limit the numbers of boreholes fired in a round to no more than 20. The final rule in § 75.1320(a) provides that no more than 20 boreholes can be fired in a round unless a permit is granted by the District Manager.

Paragraph (c) requires certain steps to be taken before a blast is fired, including the evacuation of persons from areas where a hazard would be created by the blast, a determination by the qualified person that all persons are a safe distance from the blasting area, and an issuance of warnings that a blast is to be fired. These precautions minimize the exposure of miners to the hazards created by the force of the blast.

Several commenters suggested that the proposed requirement specifying the evacuation of persons when blasting be revised to require them to leave the working place and other areas where a hazard would be created. Commenters

also suggested clarifying that only those persons required to leave need to be around one corner from the blast. In response to these comments, the final rule has been reworded to address these concerns.

One commenter suggested that the verbal warning given before blasting be specific and consistent throughout the industry. The Agency has not adopted specific warning language. It is the responsibility of the qualified person to determine that all persons are a safe distance from the blasting area regardless of the warning given.

Paragraph (d) requires all shots to be fired promply after they are ready to be fired. This practice minimizes the time interval between the warning and firing of the round.

At the request of several commenters, § 75.1324(e) of the proposed rule has been moved and now appears as § 75.1326(c) of the final rule.

Section 75.1326 Examination after blasting.

This standard is derived from existing § 75.1308 and Part 15 and specifies the steps to be taken after blasting. It prohibits entry into the blast area before it is clear of smoke and dust. The concentrations of smoke and dust immediately after the blast can impair the recognition of hazards such as unstable roof and rib conditions. The rule also requires that a qualified person or a person working in the presence of and under the direction of a qualified person examine the area for misfires, methane and other hazardous conditions as soon as the smoke and dust have cleared. An immediate examination after blasting enables prompt action to be taken to correct any hazards resulting from the blast. In addition, the rule requires that if a round has partially detonated the qualified person must leave the area at once and no persons are to reenter the affected area for at least 5 minutes.

Many commenters recommended changing the proposed waiting period of at least 15 minutes found in the proposal at § 75.1324(e), to a waiting period of at least 5 mintues before entering an affected area when a round partially detonates. Commenters stated that the additional waiting period of 10 minutes or more could potentially permit serious problems to develop, particularly in mines where high methane liberation is common. Commenters also stated that partial detonation might result in damage to ventilation equipment in or near the face area and if repairs were not made immediately, dangerous accumulations of methane could occur. Commenters also cited several State laws which impose a 5-minute waiting period before persons are permitted to enter an affected area where a misfire has occurred. Other commenters favored the 15 minute waiting period. The Agency has adopted the waiting period of 5 minutes in the final rule. Should a fire occur from a partially detonated explosive, a longer waiting period may result in the inability to fight and extinguish the fire. The Agency also considered the increased hazard inherent in the accumulation of methane to explosive levels should damage occur to the ventilation system resulting from a protracted period of time before re-entry to the area containing a partially detonated round.

Section 75.1327 Misfires.

This final rule is derived from Part 15 except paragraph (b) which is new. It specifies general procedures to be followed in the handling of misfires. Misfires that are not found and disposed of promptly and safely can be accidentally detonated during loading or other operations, creating the potential for serious injury. Because of varying product performance characteristics, the rule does not specify a particular procedure for handling misfires, but allows a qualified person and mine management to address these situations on a case-by-case basis.

Paragraph (a) limits the work in the area affected by a misfire to that done by a qualified person to dispose of the misfire and other work to protect persons, such as making necessary roof control adjustments. This measure limits the exposure of persons to the hazard of accidental detonation.

A commenter suggested that the area in which a qualified person is working to dispose of misfires should be "dangered off" until the misfire is disposed of. The rule addresses the substance of this commenter's concern by restricting work permitted in the affected area to only that of a qualified person and other work necessary to protect persons.

Paragraph (b) of the final rule, as did the proposal, addresses to steps to be followed when a misfire cannot be disposed of by a qualified person. The rule requires each accessible entrance to the affected area to be posted with a warning to prohibit entry. The rule also requires immediate reporting of undisposed misfires to mine management so that technical assistance can be arranged to safely dispose of the misfire.

One commenter suggested that the information concerning misfires reported to mine management be recorded and maintained as a record signed by the mine foreman. The purpose of the rule is to provide information for mine management that will assist in disposing of misfires and in identifying and eliminating the cause of misfires. Requiring the mine operator to keep a record of each misfire adds to the burden of paperwork and provides no reasonable assurance that keeping such records will provide the means to reduce the incidents of misfires that may occur. The Agency considers that the manner in which this information is kept is an appropriate matter for mine management that need not be regulated.

Section 75.1328 Damaged or deteriorated expolosives and detonators.

This standard sets forth new requirements for handling and disposing of damaged or deteriorated explosives or detonators. Such exposives and detonators are required by paragraph (a) to be placed in separate containers of nonconductive and nonsparking material and removed from the mine or placed in a magazine for later removal. Several commenters recommended that damaged or deteriorated explosives and detonators be placed in separate containers constructed of nonsparking materials rather than being placed in separate containers with absorbent material as specified in the proposal. Commenters stated that absorbent material could cause an increased hazard if the wrong type of absorbent material, such as coal dust, is used. The use of a container constructed of nonsparking material effectively minimizes the possibility of inadvertent detonation.

The same commenters recommended removal of damaged explosives and detonators at the end of the shift to prevent exposing miners to unnecesary hazards. This suggestion was not adopted because paragraph (c) of this standard requires deteriorated explosives and detonators to be handled and disposed in accordance with the instructions of the manufacturer.

Paragraph (b) requires damaged detonators to be shunted, if practicable, before either being removed from the mine or placed in a magazine. One commenter recommended that damaged or deteriorated detonators be protected from stray current. The final rule addresses this provision by means of shunting the detonators, when practicable.

Paragraph (c) requires damaged or deteriorated explosives or detonators to be handled and disposed of in accordance with the instructions of the manufacturer and is from the preproposal draft. Commenters

requested inclusion of this provision in the final rule, although it was not in the proposed rule. Because of the variety of explosive formulations and detonator types and characteristics, the instructions provided by manufacturers are relied upon by the mining industry as the authoritative source of information when disposing of damaged or deteriorated explosives. Other commenters recommended that damaged expolsives and detonators be disposed of only on the surface. However, the place and method of disposal is addressed in the manufacturer's specific instructions.

Derivation Table

The following derivation table lists the section number of each standard in the final rule and the section number of the existing standard from which it is derived.

New Section	Old Section
75.1300	75.2 and Part 15.2.
75.1301	Part 15 (Article IV).
75.1310	75.1300, 75.1303 and Part 15.19(d).
75.1310(d)	New.
75.1311	75.1301, 75.1304, 75.1305 and 75.1403-7(i).
75.1311(b)(2)	New.
75.1312	75.1301, 75.1306, 75.1307 and Part 15.19(b).
75.1312 (c), (f) and (g)	New.
75.1313 (a) and (c)	New.
75.1313(b)	75.1301, 75.1304, 75.1306 and 75.1307.
75.1314	New.
75.1315	75.1300, 75.1302 and Part 15 (Article IV).
75.1315(d), (e) and (f)	New.
75.1316	75.1307 and Part 15 (Article IV).
75.1316(d)	New.
75.1317	New.
75.1318 (a), (c), (d) and (e).	New.
75.1318 (b), (f), (g)	Part 15 (Article IV).
75.1319	Part 15 (Article IV).
75.1320(a)	75.1303.
75.1320 (b), (c), (d) and (e).	New.
75.1321	75.1303-1.
75.1322(a)	75.1303 and Part 15 (Article IV).
75.1322 (c), (d) and (e)	Part 15 (Article IV).
75.1322 (b), (f), (g) and (h).	New.
75.1323 (a), (b), (c), (d) and (e).	Part 15 (Article IV).
75.1323 (f), (g), (h), (i) and (j).	New.
75.1324	75.320 and 75.1302.
75.1325	Part 15 (Article IV).
75.1325(b)	New.
75.1326	75.1308 and Part 15 (Article IV).
75.1327 (a) and (b)(2)	Part 15 (Article IV).
75.1327(b)(1)	New.
75.1328	New.

Distribution Table

The following distribution table lists the section number of each existing standards in Subpart N and Part 15 and the section number of the final rule that contain revised provisions derived from the corresponding existing section.

Old Section	New Section
75.1300	75.1310 and 75.1315.
75.1301	75.1311, 75.1312 and 75.1313.
75.1302 (a) and (b)	75.1315.
75.1302(c)	75.1324.
75.1303	75.1310, 75.1320(a) and 75.1322.
75.1303-1	75.1321.
75.1304	75.1311 and 75.1313.
75.1305	75.1311.
75.1306	75.1312 and 75.1313.
75.1307	75.1312, 75.1313 and 75.1316(a).
75.1308	75.1326.
Part 15	75.1301, 75.1310, 75.1312, 75.1315 75.1316, 75.1318, 75.1319, 75.1322, 75.1323, 75.1325, 75.1326 and 75.1327.

III. Drafting Information

The principal persons responsible for preparing this final rule are: Edward C. Connor and A. Keith Watson, Coal Mine Safety and Health, MSHA; Harry C. Verakis, Technical Support, MSHA; Richard J. Mainiero, Bureau of Mines; Helen B. Caraway, Office of Standards, Regulations and Variance, MSHA; and Linda Fort, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify potential costs and benefits associated with the final changes to its explosives and blasting standards for underground coal mines. The Agency has incorporated this analysis into the Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, summarized below, MSHA has determined that the final rule would not result in major cost increases nor have an effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small business when developing regulatory proposals. The final rule clarifies compliance responsibilities and adopts performance-oriented standards which will benefit small mining operations.

In the following summary of the Initial Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the final requirements with the costs of the existing requirements. A copy of the full analysis is available upon request.

MSHA estimates the annual cost for compliance with the existing requirements to be $2.5 million compared to $2.9 million for the final rule. The final regulations effect approximately 1700 underground mining operations. MSHA estimates about 975 of these mines are small businesses. The impact on small mines under existing requirements is $1.5 million compared to $1.8 million for the final rule representing a 19 percent increase. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees.

In developing cost estimates, MSHA has taken into consideration industry-wide practices. Compliance costs are related to labor, supplies, and equipment purchase and maintenance. In calculating the costs of the existing standards and the final rule, the Agency projected capital expenditures and recurring costs.

In the final rule, MSHA has reorganized, updated, and clarified existing provisions and deleted duplicative provisions. MSHA believes that clarification will foster a better understanding of safe blasting practices and that the new final requirements, especially those that address the use of sheathed explosive units, will afford greater protection for the miners.

The primary benefit of the final rule is the enhanced protection that the standards will provide to miners who are exposed to the hazards related to the use of explosives.

V. Paperwork Reduction Act of 1980

The final rule contains two collection of information provisions subject to the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The information collection requirements in existing Part 15 and § 75.1303-1, concerning certification of shot firer qualification and permits for the use of nonpermissible blasting units and to fire more than 20 boreholes, are retained in final §§ 75.1301 and 75.1321.

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35), the collection of information requirements contained in §§ 75.1301 and 75.1321 of the final rule have been approved by

OMB under control numbers 1219–0106 and 1219–0025.

List of Subjects in 30 CFR Part 75

Mine safety and health, Mandatory safety standards, Underground coal mines, Explosives and blasting.

Date: November 9, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, pursuant to 30 U.S.C. 811 Part 75 Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations is amended as set forth below:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

2. Paragraph (c)(2) of § 75.2 is removed and paragraph (c)(3) is redesignated as (c)(2).

3. Newly redesignated § 75.2(c)(2) is revised to read as follows:

§ 75.2 Definitions

* * * * *

(c)* * *

(2) The manner of use of equipment means the manner of use prescribed by the Secretary.

* * * * *

Subpart D—Ventilation

§ 75.320 [Removed]

4. Subpart D is amended by removing § 75.320.

Subpart O—Hoisting and Mantrips

§ 75.1403–7 [Amended]

5. Section 75.1403–7 is amended by removing and reserving paragraph (i).

6. Subpart N is revised to read as follows:

Subpart N—Explosives and Blasting

Sec.

75.1300 Definitions.
75.1301 Qualified person.
75.1310 Explosives and blasting equipment.
75.1311 Transporting explosives and detonators.
75.1312 Explosives and detonators in underground magazines.
75.1313 Explosives and detonators outside of magazines.
75.1314 Sheathed explosive units.
75.1315 Boreholes for explosives.
75.1316 Preparation before blasting.
75.1317 Primer cartridges.
75.1318 Loading boreholes.
75.1319 Weight of explosives permitted in boreholes in bituminous and lignite mines.
75.1320 Multiple-shot blasting.
75.1321 Permit for firing more than 20 boreholes and to use nonpermissible blasting units.
75.1322 Stemming boreholes.
75.1323 Blasting circuits.
75.1324 Methane concentration and tests.
75.1325 Firing procedure.
75.1326 Examination after blasting.
75.1327 Misfires.
75.1328 Damaged or deteriorated explosives and detonators.

Subpart N—Explosives and Blasting

§ 75.1300 Definitions.

The following definitions apply in this subpart.

Approval. A document issued by MSHA which states that an explosive or explosive unit has met the requirements of this part and which authorizes an approval marking identifying the explosive or explosive unit as approved as permissible.

Battery starting. The use of unconfined explosives to start the flow of coal down a breast or chute in an anthracite mine.

Blasting off the solid. Blasting the working face without providing a second free face by cutting, shearing or other method before blasting.

Instantaneous detonator. An electric detonator that fires within 6 milliseconds after application of the firing current.

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½-inch thick plywood, ½-inch thick gypsum wall board, ⅛-inch thick low carbon steel and ¼-inch thick plywood, bonded together in that order.

Opener hole. The first hole or holes fired in a round blasted off the solid to create an additional free face.

Permissible blasting unit. A device that has been approved by MSHA and that is used for firing electric detonators.

Permissible explosive. Any substance, compound or mixture which is approved by MSHA and whose primary purpose is to function by explosion.

Round. A group of boreholes fired or intended to be fired in a continuous sequence with one application of the firing current.

Sheathed explosive unit. A device consisting of an approved or permissible explosive covered by a sheath encased in a sealed covering and designed to be fired outside the confines of a borehole.

Short-delay electric detonator. An electric detonator with a designated delay period of 25 to 1,000 milliseconds.

§ 75.1301 Qualified person.

(a) A qualified person under this subpart is a person who—

(1) Is certified or qualified to use explosives by the State in which the mine is located provided that the State requires a demonstration of ability to safely use permissible explosives as prescribed by this subpart effective January 17, 1989; or

(2) In States that do not certify or qualify persons to use explosives required by this section, has at least 1 year of experience working underground on a coal producing section of a mine where explosives are used and demonstrates to an authorized representative of the Secretary the ability to safely use permissible explosives.

(b) Persons qualified or certified by a State to use permissible explosives in underground coal mines as of May 17, 1989 are considered qualified under this section even though their State program did not contain a demonstration of ability requirement.

§ 75.1310 Explosives and blasting equipment.

(a) Only permissible explosives, approved sheathed explosive units, and permissible blasting units shall be taken or used underground.

(b) Black blasting powder, aluminum-cased detonators, aluminum-alloy-cased detonators, detonators with aluminum leg wires, and safety fuses shall not be taken or used underground.

(c) Explosives shall be fired only with a permissible blasting unit used in a manner consistent with its approval. Blasting units approved by MSHA that have approval labels specifying use with short-delay detonators with delay periods between 25–500 milliseconds are accepted to fire short-delay detonators up to 1,000 milliseconds, instantaneous detonators and long period delay detonators for anthracite mines.

(d) Permissible explosives and sheathed explosive units shall not be used underground when they are below the minimum product firing temperature specified by the approval. Explosives previously approved which do not specify a minimum firing temperature are permissible for use so long as the present approval is maintained.

(e) Electric detonators shall be compatible with the blasting unit and have sufficient strength to initiate the explosives being used.

§ 75.1311 Transporting explosives and detonators.

(a) When explosives and detonators are to be transported underground—

(1) They shall be enclosed in separate, substantially constructed containers made of nonconductive material, with

no metal or other conductive materials exposed inside, except as specified in paragraph (d) of this section; and

(2) Each container of explosives and of detonators shall be indelibly marked with a readily visible warning identifying the contents.

(b) When explosives and detonators are transported by any cars or vehicles—

(1) The cars or vehicles shall be marked with warnings to identify the contents as explosive. The warnings shall be readily visible to miners approaching from any direction and in indelible letters;

(2) Explosives and detonators shall be transported either in separate cars or vehicles, or if in the same cars or vehicles as follows:

(i) Class A and Class C detonators in quantities greater than 1,000 shall be kept in the original containers as shipped from the manufacturer and separated from explosives by a hardwood partition at least 4 inches thick, a laminated partition or equivalent; and

(ii) Class A and Class C detonators in quantities of no more than 1,000 shall be separated from explosives by a hardwood partition at least 4 inches thick, a laminated partition or equivalent.

(3) No persons, other than those necessary to operate the equipment or to accompany the explosives and detonators, shall be transported with explosives and detonators, and

(4) When explosives and detonators are transported using trolley locomotives—

(i) Trips carrying explosives and detonators shall be separated from all other mantrips by at least a 5-minute interval; and

(ii) Cars containing explosives or detonators shall be separated from the locomotives by at least one car that is empty or that contains noncombustible materials.

(c) When explosives and detonators are transported on conveyor belts—

(1) Containers of explosives shall be separated from containers of detonators by at least 50 feet;

(2) At least 6 inches of clearance shall be maintained between the top of any container of explosives or container of detonators and the mine roof or other obstruction;

(3) Except when persons are riding the belt to accompany explosives or detonators, a person shall be at each transfer point between belts and at the unloading location; and

(4) Conveyor belts shall be stopped before explosives or detonators are loaded or unloaded.

(d) When explosives and detonators are transported by hand they shall be carried in separate, nonconductive, closed containers.

§ 75.1312 Explosives and detonators in underground magazines.

(a) The quantity of explosives kept underground shall not be more than is needed for 48 hours of use.

(b) Except as provided in § 75.1313, explosives and detonators taken underground shall be kept in—

(1) Separate, closed magazines at least 5 feet apart; or

(2) The same closed magazine when—

(i) Separated by a hardwood partition at least 4 inches thick; or

(ii) Separated by a laminated partition; or

(iii) Separated by a device that is equivalent.

(c) Only explosives and detonators shall be kept in underground magazines.

(d) Magazines shall be substantially constructed and all interior surfaces shall be made of nonconductive material, with no metal or other conductive material exposed inside.

(e) All magazines shall be—

(1) Located at least 25 feet from roadways and any source of electric current;

(2) Located out of the direct line of the forces from blasting; and

(3) Kept as dry as practicable.

(f) Magazine locations shall be posted with indelibly marked and readily visible warnings indicating the presence of explosives.

(g) Only materials and equipment to be used in blasting shall be stored at magazine locations.

§ 75.1313 Explosives and detonators outside of magazines.

(a) The quantity of explosives outside a magazine for use in a working section or other area where blasting is to be performed shall—

(1) Not exceed 100 pounds; or

(2) Not exceed the amount necessary to blast one round when more than 100 pounds of explosives is required.

(b) Explosives and detonators outside a magazine that are not being transported or prepared for loading boreholes shall be kept in closed separate containers made of nonconductive material with no metal or other conductive material exposed inside and the containers shall be—

(1) At least 15 feet from any source of electric current;

(2) Out of the direct line of the forces from blasting;

(3) In a location to prevent damage by mobile equipment; and

(4) Kept as dry as practicable.

(c) Explosives and detonators not used during the shift shall be returned to a magazine by the end of the shift.

§ 75.1314 Sheathed explosive units.

(a) A separate instantaneous detonator shall be used to fire each sheathed explosive unit.

(b) Sheathed explosive units shall be primed and placed in position for firing only by a qualified person or a person working in the presence of and under the direction of a qualified person. To prime a sheathed explosive unit, the entire detonator shall be inserted into the detonator well of the unit and be held securely in place.

(c) Sheathed explosive units shall not be primed until immediately before the units are placed where they are to be fired. A sheathed explosive unit shall not be primed if it is damaged or deteriorated.

(d) Except in anthracite mines, rock dust shall be applied to the roof, ribs and floor within a 40-foot radius of the location where the sheathed explosive units are to be fired.

(e) No more than three sheathed explosive units shall be fired at one time.

(f) No sheathed explosive unit shall be fired in contact with another sheathed explosive unit.

§ 75.1315 Boreholes for explosives.

(a) All explosives fired underground shall be confined in boreholes except—

(1) Sheathed explosives units and other explosive units approved by MSHA for firing outside the confines of a borehole; and

(2) Shots fired in anthracite mines for battery starting or for blasting coal overhangs. No person shall go inside a battery to start the flow of material.

(b) Each borehole in coal for explosives shall be at least 24 inches from any other borehole and from any free face, unless prohibited by the thickness of the coal seam.

(c) Each borehole in rock for explosives shall be at least 18 inches from any other borehole in rock, at least 24 inches from any other borehole in coal, and at least 18 inches from any free face.

(d) No borehole that has contained explosives shall be used for starting any other hole.

(e) When blasting slab rounds off the solid, opener holes shall not be drilled beyond the rib line.

(f) When coal is cut for blasting, the coal shall be supported if necessary to maintain the stability of the column of explosives in each borehole.

§ 75.1316 Preparation before blasting.

(a) Before priming any explosives—

(1) All mobile electric equipment shall be removed to a distance of at least 50 feet from the working place or other area where blasting is to be performed; and

(2) All stationary electric equipment within 50 feet of the working place or other area where blasting is to be performed shall be deenergized.

(b) Before loading boreholes with explosives, each borehole shall be cleared and its depth and direction determined.

(c) No borehole drilled beyond the depth of cut coal shall be loaded with explosives unless that portion of the borehole deeper than the cut is tamped with noncombustible material.

(d) When two working faces are approaching each other, cutting, drilling and blasting shall be done at only one working face at a time if the two faces are within 25 feet of each other.

§ 75.1317 Primer cartridges.

(a) Primer cartridges shall be primed and loaded only by a qualified person or a person working in the presence of and under the direction of a qualified person.

(b) Primer cartridges shall not be primed until immediately before loading boreholes.

(c) Only a nonsparking punch shall be used when priming explosive cartridges.

(d) Detonators shall be completely within and parallel to the length of the cartridge and shall be secured by half-hitching the leg wires around the cartridge or secured by an equally effective method.

§ 75.1318 Loading boreholes.

(a) Explosives shall be loaded by a qualified person or a person working in the presence of and under the direction of a qualified person.

(b) When boreholes are being loaded, no other work except that necessary to protect persons shall be done in the working place or other area where blasting is to be performed.

(c) When loading boreholes drilled at an angle of 45 degrees or greater from the horizontal in solid rock or loading long holes drilled upward in anthracite mines—

(1) The first cartridge in each borehole shall be the primer cartridge with the end of the cartridge containing the detonator facing the back of the borehole; and

(2) The explosive cartridges shall be loaded in a manner that provides contact between each cartridge in the borehole.

(d) When loading other boreholes—

(1) The primer cartridge shall be the first cartridge loaded in the borehole;

(2) The end of the cartridge in which the detonator is inserted shall face the back of the borehole; and

(3) The primer cartridge and other explosives shall be pushed to the back of the borehole in a continuous column with no cartridge being deliberately crushed or deformed.

(e) An explosive shall not be loaded into a borehole if it is damaged, deteriorated of if the cartridge is incompletely filled.

(f) Explosives of different brands, types or cartridge diameters shall not be loaded in the same borehole.

(g) Only nonconductive, nonsparking tamping poles shall be used for loading and tamping boreholes. The use of nonsparking connecting devices for extendable tamping poles is permitted.

§ 75.1319 Weight of explosives permitted in boreholes in bituminous and lignite mines.

(a) The total weight of explosives loaded in any borehole in bituminous and lignite mines shall not exceed 3 pounds except when blasting solid rock in its natural deposit.

(b) The total weight of explosives loaded in a borehole less than 6 feet deep in bituminous and lignite mines shall be reduced by ½ pound for each foot of borehole less than 6 feet.

§ 75.1320 Multiple-shot blasting.

(a) No more than 20 boreholes shall be fired in a round unless permitted in writing by the District Manager under § 75.1321.

(b) Instantaneous detonators shall not be used in the same circuit with delay detonators in any underground coal mine.

(c) In bituminous and lignite mines, only detonators with delay periods of 1,000 milliseconds or less shall be used.

(d) When blasting in anthracite mines, each borehole in a round shall be initiated in sequence from the opener hole or holes.

(e) Arrangement of detonator delay periods for bituminous and lignite mines shall be as follows:

(1) When blasting cut coal—

(i) The first shot or shots fired in a round shall be initiated in the row nearest the kerf or the row or rows nearest the shear; and

(ii) After the first shot or shots, the interval between the designated delay periods of successive shots shall be at least 50 milliseconds but not more than 100 milliseconds.

(2) When blasting coal off the solid—

(i) Each shot in the round shall be initiated in sequence from the opener hole or holes; and

(ii) After the first shot or shots, the interval between the designated delay periods of successive shots shall be at least 50 milliseconds but not more than 100 milliseconds.

§ 75.1321 Permits for firing more than 20 boreholes and for use of nonpermissible blasting units.

(a) Applications for permits for firing more than 20 boreholes in a round and for the use of nonpermissible blasting units shall be submitted in writing to the District Manager for the district in which the mine is located and shall contain the following information:

(1) The name and address of the mine;

(2) The active workings in the mine affected by the permit and the approximate number of boreholes to be fired;

(3) The period of time during which the permit will apply;

(4) The nature of the development or construction for which they will be used, e.g., overcasts, undercasts, track grading, roof brushing or boom holes;

(5) A plan, proposed by the operator designed to protect miners in the mine from the hazards of methane and other explosive gases during each multiple shot, e.g., changes in the mine ventilation system, provisions for auxiliary ventilation and any other safeguards necessary to minimize such hazards;

(6) A statement of the specific hazards anticipated by the operator in blasting for overcasts, undercasts, track grading, brushing of roof, boom holes or other unusual blasting situations such as coalbeds of abnormal thickness; and

(7) The method to be employed to avoid the dangers anticipated during development or construction which will ensure the protection of life and the prevention of injuries to the miners exposed to such underground blasting.

(b) The District Manager may permit the firing of more than 20 boreholes of permissible explosives in a round where he has determined that it is necessary to reduce the overall hazard to which miners are exposed during underground blasting. He may also permit the use of nonpermissible blasting units if he finds that a permissible blasting unit does not have adequate blasting capacity and that the use of such permissible units will create any of the following development or construction hazards:

(1) Exposure to disturbed roof in an adjacent cavity while scaling and supporting the remaining roof prior to wiring a new series of boreholes;

(2) Exposure to underburden boreholes where prior rounds have removed the burden adjacent to a remaining borehole;

(3) Exposure to an unsupported roof while redrilling large fragmented roof rock following the loss of predrilled boreholes during earlier blasting operations; or

(4) Any other hazard created by the use of permissible blasting units during underground development or construction.

(c) Permits shall be issued on a mine-by-mine basis for periods of time to be specified by the District Manager.

(d) Permits issued under this section shall specify and include as a condition of their use, any safeguards, in addition to those proposed by the operator, which the District Manager issuing such permit has determined will be required to ensure the welfare of the miners employed in the mine at the time of the blasting permitted.

(Approved by the Office of Management and Budget under control number 1219-0025)

§ 75.1322 Stemming boreholes

(a) Only noncombustible material shall be used for stemming boreholes.

(b) Stemming materials other than water stemming bags shall be tamped to fill the entire cross sectional area of the borehole.

(c) Stemming material shall contact the explosive cartridge nearest the collar of the borehole.

(d) Each borehole 4 or more feet deep shall be stemmed for at least 24 inches.

(e) Each borehole less than 4 feet deep shall be stemmed for at least half the depth of the borehole.

(f) When blasting off the solid in bituminous and lignite mines, only pliable clay dummies shall be used for stemming.

(g) The diameter of a water stemming bag shall be within ¼ of an inch of the diameter of the drill bit used to drill the borehole.

(h) Water stemming bags shall be constructed of tear-resistant and flame-resistant material and be capable of withstanding a 3-foot drop when filled without rupturing or developing leaks.

§ 75.1323 Blasting circuits.

(a) Blasting circuits shall be protected from sources of stray electric current.

(b) Detonators made by different manufacturers shall not be combined in the same blasting circuit.

(c) Detonator leg wires shall be shunted until connected into the blasting circuit.

(d) Blasting cables shall be—

(1) Well insulated, copper wire of a diameter not smaller than 18-guage; and

(2) Long enough to permit the round to be fired from a safe location that is around at least one corner from the blasting area.

(e) Blasting cables shall be shunted until immediately before firing, except when testing for circuit continuity.

(f) Wire used between the blasting cable and detonator circuitry shall—

(1) Be undamaged;

(2) Be well insulated;

(3) Have a resistance no greater than 20-guage copper wire; and

(4) Be not more than 30 feet long.

(g) Each wire connection in a blasting circuit shall be—

(1) Properly spliced; and

(2) Separated from other connections in the circuit to prevent accidental contact and arcing.

(h) Uninsulated connections in each blasting circuit shall be kept out of water and shall not contact the coal, roof, ribs, or floor.

(i) When 20 or fewer boreholes are fired in a round the blasting circuit shall be wired in a single series.

(j) Immediately prior to firing, all blasting circuits shall be tested for continuity and resistance using a blasting galvanometer or other instrument specifically designed for testing blasting circuits.

§ 75.1324 Methane concentration and tests.

(a) No shot shall be fired in an area that contains 1.0 volume percent or more of methane.

(b) Immediately before shots are fired, the methane concentration in a working place or any other area where blasting is to be performed, shall be determined by a person qualified to test for methane.

§ 75.1325 Firing procedures.

(a) Shots shall be fired by a qualified person or a person working in the presence of and under the direction of a qualified person.

(b) Only one face in a working place shall be blasted at a time.

(c) Before blasting—

(1) All persons shall leave the blasting area and each immediately adjacent working place where a hazard would be created by the blast, to an area that is around at least one corner from the blasting area;

(2) The qualified person shall ascertain that all persons are a safe distance from the blasting area; and

(3) A warning shall be given and adequate time allowed for persons to respond.

(d) All shots shall be fired promptly, after all persons have been removed to a safe location.

§ 75.1326 Examination after blasting.

(a) After blasting, the blasting area shall not be entered until it is clear of smoke and dust.

(b) Immediately after the blasting area has cleared, a qualified person or a person working in the presence of and under the direction of a qualified person, shall examine the area for misfires, methane and other hazardous conditions.

(c) If a round has partially detonated, the qualified person shall immediately leave the area and no person shall reenter the affected area for at least 5 minutes.

§ 75.1327 Misfires.

(a) When misfires occur, only work by a qualified person to dispose of misfires and other work necessary to protect persons shall be done in the affected area.

(b) When a misfire cannot be disposed—

(1) A qualified person shall post each accessible entrance to the area affected by the hazard of the misfire with a warning at a conspicuous location to prohibit entry; and

(2) The misfire shall be immediately reported to mine management.

§ 75.1328 Damaged or deteriorated explosives and detonators.

(a) Damaged explosives or detonators shall be—

(1) Placed in separate containers constructed of nonconductive and nonsparking materials; and

(2) Removed from the mine or placed in a magazine and removed when the magazine is resupplied.

(b) Damaged detonators shall be shunted, if practicable, either before being removed from the mine or placed in a magazine.

(c) Deteriorated explosives and detonators shall be handled and disposed of in accordance with the instructions of the manufacturer.

[FR Doc. 88-26411 Filed 11-17-88; 8:45 am]

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federal register

Friday
November 18, 1988

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 14, 15, and 52
Federal Acquisition Regulation (FAR); Commercial Pricing Certificates; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, and 52

Federal Acquisition Regulation (FAR); Commercial Pricing Certificates

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

ACTION: Proposed rule.

SUMMARY: This proposed rule implements the requirements of Pub. L. 98–577 and Pub. L. 99–591 pertaining to commercial pricing certificates.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 17, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), Washington, DC 20405. Please cite FAR Case 85–32 in all correspondence related to this issue.

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

SUPPLEMENTARY INFORMATION:

A. Background

On July 3, 1985 (50 FR 27560), FAC 84–10, Item III, Certificate of Commercial Pricing, was published as an interim rule implementing Pub. Laws 98–577 (applicable to the civilian agencies) and 98–525 (applicable to DOD, NASA, and the Coast Guard) requiring that acquisitions of commercial items be subject to a certification regarding the lowest price charged the public for items. Subsequently, the FY '87 DoD Appropriations Act, Pub. L. 99–591, made changes to the statutory coverage applicable to DoD, NASA, and the Coast Guard.

The FAR revisions included in this proposed rule implement Pub. Laws 98–577 and 99–591 now codified at 41 U.S.C. 253e and 10 U.S.C. 2323, respectively, and are applicable to all agencies. Under the proposed coverage, offerors/contractors in certain noncompetitive acquisitions are required to certify that the prices offered to the Government for spare or repair parts that the contractor also offers for sale to the general public are no higher than the lowest commercial price at which such parts were sold during the most recent regular period of not less than 30 days duration, or submit a written justification of the difference. The final rule, which will be developed after consideration of the public comments received from this notice of proposed rule, will rescind the interim rule and the DFARS coverage published in the **Federal Register** on June 1, 1988 (53 FR 19960).

B. Regulatory Flexibility Act

The proposed rule adds FAR 14.214, amends 15.813, revises the clause at 52.215–32, and adds the clause at 52.215–35 to implement Pub. Laws 98–577 and 99–591. Under the new coverage, offerors/contractors in certain noncompetitive acquisitions are required to certify that the prices offered for spare or repair parts that the contractor offers for sale to the general public are no higher than the lowest commercial price at which such parts were sold during the most recent regular monthly, quarterly, or other period of not less than 30 days in duration for which sales data are reasonably available. Such coverage is not expected to have a significant impact on a substantial number of small entities because the information required should be readily available to small businesses since they are less likely to have decentralized sales records and the large volume of sales transactions normally associated with larger businesses. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. 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.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Certification of Commercial Pricing is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, et seq. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 14, 15, and 52

Government procurement.

Dated: November 14, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 14, 15, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

2. Section 14.214 is added to read as follows:

14.214 Commercial pricing certificates.

Sealed bid acquisitions of parts or components as defined in 15.813–2 are subject to the requirements of 15.813, Commercial Pricing Certificates, including the solicitation provisions and contract clause prescription in 15.813–7, when conditions specified therein are applicable.

PART 15—CONTRACTING BY NEGOTIATION

3. Sections 15.813 through 15.813–7 are revised to read as follows:

Sec.

15.813 Commercial pricing certificates.
15.813–1 Scope and applicability.
15.813–2 Definitions.
15.813–3 Policy.
15.813–4 Requirements for submission of commercial pricing certificates.
15.813–5 Exemption from the requirement to submit commercial pricing certificates.
15.813–6 Procedures.
15.813–7 Solicitation provision and contract clause.

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

15.813 Commercial pricing certificates.

15.813–1 Scope and applicability.

This section prescribes policies and procedures for obtaining certificates from contractors relating to prices offered for parts or components as defined in 15.813–2. It implements the statutory provisions in 41 U.S.C. 253e for civilian agencies and 10 U.S.C. 2323 for the Department of Defense, the National Aeronautics and Space Administration, and Coast Guard.

15.813–2 Definitions.

"Lowest commercial price," as used in this section, means the lowest price at which a sale was made to the general public of a particular part or component.

The term does not include the price at which a sale was made to—

(a) Any agency of the United States;

(b) Customers located outside the United States;

(c) A subsidiary, affiliate, or parent business organization of the contractor or any other branch of the same business entity; and

(d) For contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, such term also does not include the sale to any customer—

(1) For resale after such customer performs a service or function in connection with such part or component that increases the cost of the part or component unless the agency procuring the part or component can demonstrate that the agency is procuring the part or component before such service or function has been performed by any such customer (see 15.813–6(c)); or

(2) At a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part or component.

"Part or component," as used in this section, means—

(a) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself; or

(b) For acquisitions of civilian agencies other than the National Aeronautics and Space Administration and the Coast Guard, any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of a part or component.

15.813–3 Policy.

Contracts entered into using other than full and open competition may not result in prices for parts or components (as defined in 15.813–2) offered for sale to the public that exceed the contractor's lowest commercial prices for such parts or components unless the price difference is clearly justified by the seller or the contracting officer has determined to exempt the contractor from the requirement under 15.813–5(d). To this end, 41 U.S.C. 253e and 10 U.S.C. 2323 require offerors to certify that prices offered for parts or components are not more than their lowest commercial prices, or to submit a written statement specifying the amount of the difference between their lowest commercial prices for the parts or components and the prices offered, and providing justification for those differences. Because the forces of the competitive marketplace should ensure that the Government does not pay too high a price for commercial parts or components, commercial pricing certificates are necessary only when these forces are not present in a particular contract action.

15.813–4 Requirements for submission of commercial pricing certificates.

Unless a contract is exempt from the requirement pursuant to 15.813–5, commercial pricing certificates are required to be submitted with any offer/proposal that:

(a) Includes any parts or components that are offered for sale to the public, and

(b) Is submitted in connection with any of the following:

(1) Offers/proposals in connection with contracts to be awarded without full and open competition.

(2) Contract modifications, including contract modifications for additional parts or components, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause (but see subparagraph (b)(5) of this subsection), or funding and other administrative modifications.

(3) Orders under the provisioning line item of a contract, a basic ordering agreement, or similar arrangement if the order is being placed without full and open competition.

(4) Definitization of price on a letter contract, unpriced order, or other contract, modification, or order awarded without a definitive price. (The commercial pricing certificate is not required before the initial award, but rather shall be submitted with the proposal to definitize.)

(5) Any modification issued pursuant to the Changes clause that results in the providing of new or different parts or components.

15.813–5 Exemption from the requirement to submit commercial pricing certificates.

A contract is exempt from the requirement that a commercial pricing certificate be submitted if—

(a) The simplified small purchase procedures of Part 13 are used;

(b) An acquisition is being made under the procedures established by the General Services Administration for its multiple award schedule program; or

(c) An order is placed under an indefinite delivery type contract (a certificate is required in connection with the award without full and open competition of an indefinite delivery type contract); or

(d) The contracting officer determines that obtaining the commercial pricing certificate is not appropriate because of—

(1) National security considerations; or

(2) Significant differences between the terms of the commercial sales of the parts or components to be acquired under the contract and the terms of the contract including differences in quantity, quality, delivery requirements, or other terms and conditions.

15.813–6 Procedures.

(a) If a commercial pricing certificate is required in accordance with 15.813–4, the contracting officer shall ensure that the certificate set forth in paragraph (b) of the clause at 52.215–32, Certificate of Commercial Pricing for Parts or Components, is submitted with each offer/proposal. Notice of the requirement and requests for submission of a certificate in the solicitation is accomplished through use of the solicitation provision at 52.215–35. Contracting officers are encouraged to enter into advance agreements with contractors to consolidate submission requirements when detailed repetitive certifications and justifications would otherwise be required.

(b) When requested pursuant to paragraph (a) of this subsection, offerors/contractors are required to submit the commercial pricing certificate with their proposals unless the contracting officer determines to grant an exemption pursuant to 15.813–5(d). Exemptions from the requirement to submit a commercial pricing certificate should not be granted pursuant to 15.813–5(d)(2) unless the contracting officer has sufficient information to verify that the contractor's lowest commercial price for parts or components offered for sale to the public are subject to such substantial differences (in quantity, quality, delivery, or other terms and conditions) from Government contract terms so as to warrant the exemption. If the contracting officer determines that use of the lowest commercial price for a part or component is not appropriate for a contract under 15.813–5(d), this determination should be communicated to the offeror/contractor in writing. Contracting officers may accept

information supporting possible exemptions from offerors/contractors at any time prior to agreement on price. Exemptions relieve the offerors/contractors from the statutory and contractual submission requirement.

(c) For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, a contracting officer may make a determination that the definition of "Lowest Commercial Price" in the clause at 52.215–32 shall include the price at which a sale was made to any person or corporation for resale by the person or corporation. In making this determination, the contracting officer must be able to demonstrate that the parts or components are being procured by the contracting officer under the same terms and conditions at which a sale was made to the person or corporation for resale.

(d) The contracting officer shall request submission of a new certificate when the validity of the certificate originally submitted with an offer/proposal becomes doubtful before award because of submission of a new or revised proposal or as a result of discussions.

(e) If, after award, the contracting officer learns or suspects that a certificate was inaccurate, incomplete, or misleading, the contracting officer shall request an audit under the authority of paragraph (c) of the clause at 52.215–32. If the contracting officer determines that a certificate is inaccurate, incomplete, or misleading, the Government is entitled to a price adjustment for any overcharge (see paragraph (d) of the clause at 52.215–32).

(f) Individual or class determinations made under 15.813(d) (1) or (2), and advance agreements made under paragraph (a) of this subsection, shall be documented in the contract file.

(g) Possession of a commercial pricing certificate is not a substitute for examining a contractor's proposal and determining that the prices offered are fair and reasonable. The certificate represents a tool to assist the contracting officer in the determination. The contracting officer shall obtain sufficient information with regard to commercial parts or components to permit an understanding of the contractor's commercial pricing structure and where within that structure the acquisition fits. (See 15.804–3(h) and data obtained on the Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data.)

15.813–7 Solicitation provision and contract clause.

(a)(1) The contracting officer shall insert the clause at 52.215–32, Commercial Pricing Certificate for Parts or Components, in solicitations and contracts if a commercial pricing certificate is required by 15.813–4.

(2) For civilian agencies other than the National Aeronautics and Space Administration and the Coast Guard, the contracting officer shall insert the clause with its Alternate I in solicitations and contracts involving the furnishing of parts or components using full and open competition.

(b) The contracting officer shall insert the provisions at 52.215–35, Commercial Pricing Certificate—Notice, in solicitations if a commercial pricing certificate is required by 15.813–4.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.215–32 is revised to read as follows:

52.215–32 Certification of commercial pricing for parts or components.

As prescribed in 15.813–7(a), insert the following clause:

CERTIFICATION OF COMMERCIAL PRICING FOR PARTS OR COMPONENTS (NOV 1988)

(a) *Definitions.*

"Lowest commercial price," as used in this section, means the lowest price at which a sale was made to the general public of a particular part or component. The term does not include the price at which a sale was made to—

(1) Any agency of the United States;

(2) Customers located outside the United States;

(3) A subsidiary, affiliate, or parent business organization of the contractor, or any other branch of the same business entity; and

(4) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, such term also does not include the sale to any customer—

(i) For resale after such customer performs a service or function in connection with such part or component that increases the cost of the part of component unless the agency procuring the part or component can demonstrate that the agency is procuring the part or component before such service or function has been performed by any such customer (see 15.813–6(c)); or

(ii) At a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part or component.

"Part or component," as used in this section, means—

(1) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself; or

(2) For acquisitions of civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, any individual part, component, subassembly, assembly or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of a part or component.

(b) *Submission requirements.* The Offeror/Contractor shall execute and submit to the Contracting Officer the following certificate with any offer/proposal as required by FAR 15.813–4 when requested by the Contracting Officer:

CERTIFICATE OF COMMERCIAL PRICING FOR SUPPLIES

(1) Unless justified in subparagraph (b)(2) of this clause, by submission of this offer/proposal, the Offeror/Contractor certifies that, to the best of its knowledge and belief, the prices offered for those parts or components (whether or not separately identified) that the Contractor offers for sale are no higher than the lowest commercial price at which such items were sold to the public during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available, *provided* that in no event shall this period be less than 30 days in duration.

(2) All parts or components for which prices offered are higher than the lowest commercial price referred to in subparagraph (b)(1) of this certificate are identified below (including the amounts by which such offered prices are higher) and a written justification for the differences is attached:

Part or Component _____

Price Difference _____

(List as necessary)

Offer/Proposal No. _____

Time period for sale data _____

Firm _____

Typed name and signature _____

Title _____

Date _____

(End of certificate)

(c) *Audit.* The Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all directly pertinent records of sales and related documents, including contract terms and conditions, necessary to verify the validity of any certificate executed in accordance with paragraph (b) of this clause. The Contractor shall make those records, books, data, and documents available for examination, audit, or reproduction until 3 years after the date the certificate set forth in paragraph (b) of this clause is executed. Nothing contained in this clause shall require the submission of cost or pricing data not otherwise required by law or regulation.

(d) *Price reduction.* If any price, including profit or fee negotiated in connection with this contract, or any cost reimbursable under

this contract, has increased because the certification in subparagraph (b)(1) of the certificate or the information provided as justification in subparagraph (b)(2) of the certificate was inaccurate, incomplete, or misleading, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(End of clause)

Alternate I (Nov 1988) As prescribed in 15.813-7(a)(2), insert the following paragraph in the clause without a paragraph identifier, before paragraph (a) of this clause:

The requirements of this clause shall become operative only for any modifications to this contract involving the furnishing of parts or components, as defined in paragraph (a) of this clause, if awarded as a result of other than full and open competition.

5. Section 52.215-35 is added to read as follows:

52.215-35 Commercial pricing certificate—notice.

COMMERCIAL PRICING CERTIFICATE—NOTICE (NOV 1988)

Line Items _____ of this solicitation are parts or components to be acquired under conditions that require the submission of a commercial pricing certificate. The Offeror shall comply with the provision of this solicitation, 52.215-32, Certification of Commercial Pricing for Parts or Components, and execute and submit a certificate with its offer.

(End of provision)

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federal register

Friday
November 18, 1988

Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Drilling Operations; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-87-4111-02; Circular No. 2613]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides for the issuance of Onshore Oil and Gas Order No. 2 under the provisions of 43 CFR Subpart 3164. This order implements and supplements the requirements found in 43 CFR Subpart 3160 as they apply to drilling operations, specifically, those requirements found at §§ 3162.3–1, 3162.3–4, 3162.4–1, 3162.4–2, 3162.5–1, 3162.5–2, and 3162.5–3. This Order addresses the Bureau of Land Management's uniform national standards for the minimum levels of performance expected from lessees and operators when conducting drilling operations on Federal and Indian (except Osage Tribe) lands. The Order also details enforcement actions and prescribes the manner in which variances may be obtained from specific standards. The Bureau's specific existing internal guidelines on the subject of drilling operations have never been published formally in a Notice to Lessees and Operators, so that this Order has no direct predecessor.

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, Room 601, Premier Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Howard A. Lemm, (801) 524–3000 or Robert Kent, (202) 653–2174.

SUPPLEMENTARY INFORMATION: Section 3164.1 of 43 CFR Part 3160 provides for the issuance of Onshore Oil and Gas Orders when needed to implement and supplement the regulations in that part. All Orders are promulgated through the rulemaking process and, when issued in final form, apply on a nationwide basis. This final rulemaking contains such an Order, No. 2, Drilling Operations.

This Order establishes specific and detailed requirements along with minimum standards covering well control during drilling, casing and cementing, drilling mud and the circulating system, drill stem testing, special drilling operations, related surface use, and the abandonment of drilling operations. These operation standards will be used in conjunction with the broad requirements of Part 3160 and Onshore Oil and Gas Order No. 1. This Order also classifies all violations as minor or major. In addition, the Order establishes the process for initially classifying a violation as minor and reissuing the violation as major if not corrected and continued drilling has increased the adverse impact.

This Order sets standards designed to be minimums for drilling operations at specific pressures under differing conditions and in different parts of the country. It is recognized that, under some conditions, additional requirements will be routinely imposed, or general variances to specific requirements will be granted, either in approval documents or on a field basis. In some instances, the Order relies on existing standards prepared by the American Petroleum Institute, the Occupational Safety and Health Administration, the Texas Railroad Commission, and other agencies. These standards are generally accepted in the oil and gas industry.

The proposed rulemaking for this Onshore Oil and Gas Order No. 2 was published in the **Federal Register** on August 13, 1987 (52 FR 30310). The comment period ended on October 13, 1987. A total of 36 comments were received: 24 from business entities, 8 from offices of Federal agencies, 2 from trade associations, 1 from an Indian tribe, and 1 from an individual. The comments are discussed in the appropriate portions of this preamble where the provisions of the Order they relate to are discussed.

Discussion of II Definitions

The proposed Order defined the term "freeboard". This term has been removed from the final rulemaking because the only reference to it was in the provision on minimum standards for surface use, which has also been removed from the final rulemaking as explained elsewhere in this preamble.

The term "function test" has been changed to "functionally operated" for clarification. At the suggestion of a comment, the word "wellbore" has been added to describe the type of pressures under discussion.

The term "H_2S trim" was removed in the final rulemaking since the final rulemaking now contains no reference to this term.

Several comments suggested changes to the term and definition for "High Pressure Zone" to include low pressure or lost circulation zones. This term has been replaced throughout the Order by "Abnormal Pressure Zone", which refers to low pressure as well as high pressure, and the definition modified to reflect this distinction.

The term "fresh water" has been removed from the Definitions and replaced by the term "usable water" wherever it occurred in the text. This Order requires the protection of usable water, which includes fresh water. The standard for "usable water" of 10,000 ppm. of total dissolved solids is based on the regulatory definition by the Environmental Protection Agency of "drinking water" at 40 CFR 144.3.

A new definition for the term "lessee" is incorporated in this final rulemaking to reflect a change in definition of the term in 43 CFR Part 3160 since the Draft Order was published for comment.

Several comments on the definition of "mud for plugging purposes" suggested that it too restrictive. By using this term, the proposed Order did not intend to exclude the use of other materials. Therefore, the final rulemaking has adopted these comments and the definition has been expanded to include other materials. Consultation with the authorized officer is encouraged to determine the need for mud for plugging purposes to assure that usage is consistent with environmental concerns and established operating practices.

The term "neat cement" does not appear in the final rulemaking, and the term has been removed from the definitions.

The definition for "tagging the plug" has been modified at the suggestion of comments to remove the reference to an amount of weight not to be exceeded when placing the weight of the drill pipe on the plug. This modification was made because no real purpose was served by placing a maximum on the amount of weight placed on the plug.

At the suggestion of a comment, the definition for "targeted tee or turn" has been modified slightly for increased clarity.

The definition of "test plug" is also amended for clarity.

The term "exploratory well" has been redefined to improve the description of what constitutes an exploratory (wildcat) well.

Seven additional terms have been added to the Definitions section in this final rulemaking in response to comments received. The definition chosen for each of these terms was either as defined by a referenced regulation or, when this was not the case, generally by the most commonly used definition incorporating oil field vernacular.

Discussion of III Requirements

A comment was received requesting clarification of the introductory portion of each "Requirement" section and the specific minimum standards that are then listed below each of these requirement sections. The purpose of the Requirements section is to provide direction as to what is to be included in the Application for Permit to Drill (APD), as well as to provide general direction as to the applicability of the minimum standards that follow each of these sections. Neither the Requirements sections nor the Minimum Standards sections are intended to stand alone. However, each section has been reviewed, and clarification added as appropriate.

A. Well Control Requirements

This portion of the rulemaking contains perhaps the most detailed and technical section of the Onshore Order for Drilling Operations. The principal reason for this is the need to establish minimum standards by pressure rating the equipment being utilized. Therefore, even though there is duplication in some of the minimum standards as they uniformly apply to 2M, 3M, 5M, and 10M and 15M systems, substantial differences in usage of equipment require each pressure rating to be listed separately.

A comment requested a definition of the term "operational" used in section III A.1. A definition for this term has been included in the final rulemaking in the Definitions section.

Other comments were received on this same section (III.A.1.) concerning the criteria for establishing the pressure rating of the well control equipment to be used. In the draft order these criteria were established "assuming no fluid (except gas) in the hole". The oil industry comments received on this section were critical of the criteria as being too restrictive and suggestive of a worst-case scenario. While a worst-case scenario represents a legitimate method, used by a number of regulatory agencies and energy companies in developing their design criteria for well control, a compromise has been adopted in the final rulemaking because assuming a totally evacuated hole (except gas) is too extreme to use for establishing minimum standards.

The compromise wording adopted assumes a "partially evacuated hole with a pressure gradient of 0.22 psi/ft." as the criteria for system design. This adopted pressure gradient parameter assumes a partially evacuated hole whereby the hydrostatic pressure gradient is approximately double that assumed in the draft order. It also represents approximately one-half the hydrostatic pressure of a column of water. In addition to being an easily remembered specification, it also represents an appropriate compromise and a legitimate minimum design criterion.

A comment was received concerning section III.A.2. suggesting that the Order should establish well control training provisions. Although this concept has merit, well control training for operators is not within the identified scope of this rulemaking and accordingly is not addressed here. However, this comment has been referred to appropriate BLM personnel for separate consideration.

Minimum standard III.A.i. has been editorially modified for clarity by adding the words "well control" in describing the device required as suggested in the comments received.

The minimum standard III.A.ii. for 2M systems has been modified as suggested in comments to clarify that an "annular preventer, double ram or two rams with one being a blind and one being a pipe ram," is required. This was the intention of the minimum standard contained in the draft Order, but as written could have been understood to require 4 rams, with 1 being a double, and including a blind and a pipe ram as well.

The minimum standard for III.A.iii. received several comments. Some of these noted that 3M systems are the ones most commonly available in some regions. Their use, it was noted, was predicted on availability rather than necessity. Compliance with the provisions of this Order is considered a minimum requirement. As stated in I.D.1., higher rated equipment may be used to meet and maintain these standards without being held to the higher standards normally applied to such equipment. Therefore, if the pressure expected is in the 2M category, the operator should state this in the application. The use of equipment of a higher pressure rating than that approved does not subject the operator to the specifications for the higher pressure rated equipment. Operators are reminded to base requests or equipment approval on this understanding. Since I.D.1. clearly addresses the above mentioned concerns, no further explanation or modification was deemed necessary in the text of the final rulemaking. It should be noted that if drilling were to occur in an area where a 2M system was appropriate and approved, the use of a 3M system without, for example, an annular preventer (which is not required in a 2M system) is, of course, fully acceptable. Accordingly, along with the more liberal assumption of a .22 psi/ft fluid in the hole rather than fully evacuated, as explained earlier, the standard is now appropriate without further modification and as such is consistent with API RP53.

Another comment on this section addressed the draft minimum standard for a drilling spool with side outlet connections. The comment stated that this was too restrictive because the blowout preventer (BOP) itself could have side outlets and functions in the same manner as the drilling spool. The final rulemaking has been modified to allow for this type of equipment and usage not only for a 3M system but for higher rated pressure systems as well.

The minimum standard in the final rulemaking for 2 kill line valves was modified from the draft as suggested by a comment to permit one of the two valves to be a check valve to clarify the intent of the Order.

The minimum standard for safety valves and subs was modified as suggested by comments to clarify intent and now reads "safety valve and subs to fit all drill string connections in use". This has been modified similarly in the requirements for higher rated systems as well.

The term "BOPE" was added to the minimum standard for clarification. It now reads, "All BOPE connections subject to well pressure shall be flanged, welded, or clamped." Connections not subjected to well pressure in the cellar, for example, or those connections upstream from check valves, etc., could be hammer unions as some comments suggested. The minimum standard addresses only those connections directly subject to well pressure conditions. This same modification has been made to the minimum standards for higher rated systems.

The minimum standards for 5M systems in section III.A.iv. generated numerous comments, many of which addressed similar items and nearly all of which suggested minor changes for clarity. As noted below, these changes were for the most part incorporated in this final rulemaking.

The second item in the minimum standards for 5M systems has been completely reworded at the suggestion of comments and broken into 2 separate standards to improve clarity and expound the original intent concerning the appropriate usage of a second pipe ram.

The use of remote kill line on a 5M system received several conflicting comments. This minimum standard is retained as proposed, because it reflects an appropriate and necessary minimum standard.

Comments were received suggesting that the minimum standard in the draft requiring an inside BOP or float sub was not appropriate and did not represent a true minimum standard. The requirement has not been removed, because having an inside BOP or float sub on site that will fit the drill string is standard procedure and necessary to prevent blowouts. However, this standard has been amended to apply specifically to drill string connections in use rather than the entire string.

The minimum standards for 10M and 15M systems in section III.A.2.a.v. received general comments expressing satisfaction with all the specified standards as being appropriate and necessary given the high relative pressures under consideration. However, other useful comments were received as discussed below which addressed issues that warranted further consideration.

The minimum standard for a rotating head if conditions warrant as required in the draft Order was removed since it was not stated as a true minimum standard. The authorized officer at the time the APD is approved always has the discretionary authority to require additional equipment if conditions warrant.

Two comments addressed the minimum standard that requires "3 chokes, 1 being remotely controlled." This standard remains as stated in the draft Order since this requirement is well-accepted operating practice and represents an appropriate minimum standard.

The requirement for a wear ring received several comments. These ranged from the belief that a wear ring is appropriate for all pressure systems to the belief that a wear ring is inappropriate for any system. The minimum standard for a wear ring on 10M and 15M systems has been retained in the final rulemaking in realization that detecting significant wear particularly in these higher rated systems is directly related to responsible well control equipment requirements.

The minimum standard in paragraph III.A.2.a.vii. attracted 1 comment suggesting different wording to recognize the existence of alternative measures that would satisfy the intent of the standard. This minimum standard has been modified to accommodate this request.

The minimum standard in paragraph III.A.2.b.i. generated several comments, some of which suggested that the choke lines should be anchored. This requirement has been included in the final rulemaking. This minimum standard also received comment concerning the requirement that the lines be straight unless turns use tee blocks or are targeted with running tees. This part of the minimum standard was not further modified since it represents an appropriate minimum standard consistent with established operating practice. Operators are reminded that if an instance occurs whereby a legitimate exception to this practice is necessary a variance can be requested as explained elsewhere in this Order.

Several comments were received concerning paragraph III.A.2.b.ii., which relates to the choke manifold equipment configurations. This standard was modified for clarity to improve the original intended meaning. Several valves as shown on the drawing have been removed or their size reduced as suggested in comments since they did not serve an operational purpose and, therefore, were not true minimum standards. Another comment on the choke manifold system urged that wording should be incorporated to state that the system should be kept from freezing. Since the Order requires that all equipment shall be "operational", which includes keeping components from freezing or from being affected by any other factors that would render them non-operational, no greater specificity in this regard is necessary.

As requested in comments, the requirements of this subpart have been clarified by the addition of minimum standards III.A.2.b.iii. and III.A.2.b.iv. These paragraphs more clearly specify the intent of the Order relating to unrestricted flow for valve lines, and the design for pressure gauges.

The pressure accumulator system minimum standards for 3M systems in section III.A.2.c.ii. attracted several general and somewhat divergent comments. No consensus or necessity for modification was expressed, and the final rulemaking in this section remains unchanged.

The minimum standards for 5M accumulator systems in section III.A.2.c.iii. received several comments stating that, as worded, the standards were excessive. The compromise wording adopted attempts to address the concerns of the comments. However, the 50 percent safety factor for 3 ram systems is retained after a review of manufacturers' recommendations as well as industry recommended practices since 5M and higher pressure rated systems typically require more stored volume due to higher BOP stacks, more piping length, etc.

Paragraph III.A.2.f. was amended to reflect suggestions in several comments offering improved language to clarify the minimum standard for accumulator pump capacity in accordance with conventional use. Under the revised minimum standard, the accumulator system is to be isolated rather than removed from service for testing the pump. Furthermore, the pumps are required to be capable of obtaining a minimum of 200 psi pressure above the specified accumulator precharge pressure. This change reflects a recognition that the 1200 psi standard in the proposed Order unduly restricted use of lower pressure accumulator systems.

Paragraph III.A.2.g. has been modified to specify how the valve position is to be maintained, as requested in several comments.

Paragraph III.A.2.h. generated several comments requesting modified language. A statement has been added to clarify the intent that remote controls are not required for 2M systems. The requirement for remote controls for 3M systems remains in place. Again, operators are reminded that if a 2M system is adequate under the requirements of this Order, and the use of a 3M system is being used only because of its availability, this should be noted at the time of approval and the request for approval should reflect equipment specified to handle 2M pressure situations. Only the specifications necessary for 2M systems would be enforced.

The minimum standard for well control equipment testing, III.A.2.i.i., received a comment on acceptable test fluids. Clear water or an appropriate clear liquid for subfreezing temperatures with a viscosity similar to water is required by this final rulemaking. Use of a drilling fluid rather than a clear liquid could mask and/or seal small leaks and, therefore, such use is not considered an appropriate practice or minimum standard, and the rulemaking has been amended to specify liquid rather than fluid.

The next provision providing minimum standards and enforcement provisions for well control equipment testing, in section III.A.2.i.ii., received comments that expressed concern as to the period of time to maintain the pressure test. This minimum standard has been amended to effect a compromise between the draft Order and the varying comments received. The final rulemaking specifies that the test shall be maintained for "10 minutes or until the provisions of the test are met, whichever is greater" instead of the 15-minute test period specified in the draft Order. Utilization of a test plug is addressed in the final rulemaking along

with accompanying provisions for its pressure testing.

The length of test specified in III.A.2.i.iii. was similarly modified to "10 minutes or until provisions of the test are met".

Language in III.A.2.i.iv.B. is amended to make it clear that the test is to be performed when any seal subject to test pressure is broken.

Minimum standard III.A.2.i.vii is amended to require that the annular preventer shall be functionally operated at least weekly in order to determine whether the equipment is in working order without subjecting it to well bore pressures. This requirement would not significantly damage or cause premature wear of the rubber element.

The minimum standard III.A.2.i.ix. was amended for clarity to include the words "pit level" in describing the blowout prevention equipment (BOPE) drill to be conducted as suggested in a comment. This clarification refers to an exercise to be performed by the rig crew in response to a simulation of a gain in the mud pit level that would indicate an entry of fluid in the well bore.

B. Casing and Cementing Requirements

Many comments were received concerning the provisions for casing and cementing. Although the philosophy of what constitutes good minimum standards varied somewhat throughout these comments, those comments that provided alternative language to accomplish the perceived intent of the drafted standards were especially useful. The efforts of those commentators are especially appreciated in resolving and arriving at the appropriate minimum standards herein incorporated.

Numerous changes in the introductory language that precedes the minimum standards have been made as the result of comments. The draft order inconsistently referred to fresh water zones and to usable water zones needing protection. References to fresh water zones have been replaced with the term "usable water zones" throughout this final rulemaking for consistency and for regulatory compliance since usable water zones, which include fresh water zones, are also required to be protected.

Comments also suggested alternatives to the term "leasable mineral deposits." This term has been replaced as suggested by the term "valuable deposit of minerals" and is redefined as indicated in the definitions.

The criterion for casing setting depth has been revised. The draft criterion attracted more comments than any other single item in the proposed rulemaking. This requirement as it appears in the final rulemaking is consistent with accepted standard field operating practice and establishes the standard for design assuming normal drilling operations and conditions. In this context, the casing would not have to be designed to anticipate a completely unloaded situation down-hole.

The minimum design factors for tension, collapse, and burst have been removed in this final rulemaking, because of the great variations in calculation methods within industry among companies and from region to region. However, the operator will be required to submit the design factors that were utilized in his design for all exploratory wells and/or other wells as specified by the authorized officer.

The casing design factors for formation pressure gradients and fracture gradients attracted several comments. However, since both items occur with a statement "lacking better data", there was a consensus that these criteria are appropriate.

The minimum clearance provision for a hole/casing annulus received considerable comment. The necessity for an acceptable clearance was widely recognized, yet concern was expressed because of drill bit and casing size availability considerations. Several comments included excellent data on commonly accepted hole/casing annulus clearances that are in part derived from drill bit and casing size availability. The most common example cited was the use of 7 inch casing in an 8 1/2 inch hole. This calculates to a 0.422 inch clearance on all sides, which, according to both the comments and further research within BLM, is the "smallest" prudent clearance necessary to provide adequate isolation. Therefore, the final rulemaking establishes 0.422 inch clearance on all sides as the minimum design criterion, replacing 0.500 inch. Some comments strongly suggested that as much as 1 inch on all sides may be necessary, but the final rulemaking establishes a practicable minimum standard. It is recognized that there could be exceptions in unique circumstances when the operator or the authorized officer may wish to vary this requirement. These rare exceptions can be dealt with by requesting or requiring a variance as explained elsewhere in this Order. It should be realized that, as with any minimum standard or requirement, the authorized officer may require an increased clearance depending on field conditions. For example, depending on circumstances, the authorized representative may require additional clearance for surface casing strings.

The "waiting on cement" time requirement drew several comments that differed widely as to the suggested appropriate times. This requirement has been amended to indicate that the time must be adequate to achieve a minimum of 500 psi compressive strength at the casing shoe prior to drilling out. This change was at the suggestion of comments received and represents the generally accepted field operating practice.

The minimum standard for casing in item III.B.1.a. has been amended as suggested in comments to improve clarity and provide for consistency with similar regulatory standards. The standard is strengthened by requiring testing and by requiring reconditioned casing to meet or exceed API standards for new casing.

The minimum standard for liners in paragraph III.B.1.b. attracted comments suggesting the overlap should be as much as 300 feet or as little as 50 feet. Maintaining the minimum standard at 100 feet of overlap was deemed the most appropriate to combine most beneficially safety and economy. Operators are free to exceed this minimum standard.

An additional comment on this section suggested language making it clear when a pressure test for liners should be performed, and setting the standards for such a test. This suggestion has been adopted in the final rulemaking.

At the request of comments, minimum standard III.B.1.e. has been amended to specify that the required report is to be made before running the next string of casing or before requesting plugging orders, whichever occurs first.

The minimum standard in paragraph III.B.1.f. received comments both on the standard for placement of centralizers and on the standard for determining the corrective action. These comments have been adopted. The standards have been amended to improve the likelihood of there being an adequate cement bond.

Minimum standard III.B.1.g. for use of top and bottom plugs was amended to improve clarity and to set forth acceptable alternatives for isolating the cement from contamination.

Minimum standard III.B.1.h. on pressure testing casing strings has been rephrased as suggested by comments in order to clarify the intent as well as the technical reasoning. As published in the proposed rulemaking, the standard for pressure testing—1 psi per foot of casing length—was an error, and the final Order returns to the standard that has been employed historically.

One comment was received suggesting alternative wording to make minimum standard III.B.1.i. on testing the pressure integrity of each casing shoe more flexible to meet varying pressure situations at different depths and in different formations. Recognizing that the well may not require a 5M system until it reaches greater depth, the suggested wording has been adopted. The final Order relaxes the requirement for portions of wells—generally the upper portions—that may not require a 5M system.

C. Mud Program Requirements

One comment was received asking that the term "mudding up" be defined. The final rulemaking includes a definition of this term.

In response to comments, the last sentence of the requirement statement for this section was modified by replacing "and" with "or" in recognition that being relatively near a premix bulk mud supply is a sufficient and acceptable alternative to maintaining sufficient quantities of mud materials on site.

For clarity and at the suggestion of a comment, the word "equipment" has been added to the term "visual mud-monitoring" in minimum standard III.C.2.

Minimum standard III.C.3. of the mud program requirements has been modified as suggested by several comments to require having mud monitoring equipment in place on all systems only when abnormal pressures are anticipated by the operator. A definition of "abnormal pressure" has been added in the definitions section to clarify when the operator is required to have monitoring equipment in place. In exploration areas, applications for permit to drill (APD) will be approved only if they call for monitoring equipment to be in place, because in such situations there can be little or no basis for anticipating normal pressures.

A change in the proposed Order at paragraph III.C.4. on testing for viscosity, density, and gel strength was made in response to comments stating that the Order should specify when it is necessary to begin requiring mud tests. This has been done in the final rulemaking by specifying that after mudding up, the tests should occur every 24 hours.

Several comments were received objecting to the minimum standard III.C.5. on the use of trip tanks. The requirement only applies to 10M, 15M, and upgraded 5M systems. Systems in such high pressure situations are unique by their nature and require special equipment to aid in the detection of kicks. This standard therefore remains unchanged, except that the authorized officer is given discretion, for 5M systems, to require a trip tank if conditions warrant.

Minimum standard III.C.6. on gas detection equipment has been completely rewritten, at the suggestion of one comment, to add a provision for monitoring other hydrocarbon gases, such as methane, as well as hydrogen sulfide. An editorial change was also made to correct the H_2S concentration listed from 100 ppm to 20 ppm.

The language of standard III.C.7. on flare systems has been changed to improve clarity by specifying that flare lines shall be positioned in the prevailing downwind direction from the gas source. In addition, the flare line discharge distance has been changed from 150 feet to 100 feet for consistency with proposed Order 6, which is in preparation, and with standards set by the Occupational Safety and Health Administration.

Standard III.C.8. has been amended to require the installation of a mud-gas separator (gasbuster) as specified at least 500 feet above the anticipated hydrocarbon zone instead of 1,000 feet as stated in the proposed rulemaking, and only for systems of 10M or greater, or those where abnormal pressures are anticipated even if the system is not 10M, rather than for all 5M or greater systems as provided in the proposed rulemaking. Several comments requested this change, which will also be consistent with the proposed Order 6 on H_2S Operations. This approach is more reasonable and flexible. The standard applies only in those discrete areas where separators are most likely to be needed. Additionally, the violation in the final rulemaking is classified as "minor" in recognition that the correction could readily be made before encountering the anticipated hydrocarbon zone.

D. Drill Stem Testing Requirements

A number of comments addressed the proposed prohibition of initiating drill stem testing (DST) outside of daylight hours. This provision has been modified to allow the authorized officer a degree of flexibility in approving DST in recognition that in the northern latitudes and during the winter months, initiation of a DST in daylight may not be practicable. Special safety requirements may be imposed by the authorized officer in those instances. Also, closed chamber DST may be accomplished day or night and provision for this has been added as suggested in comments and to clarify the original intention of the draft.

Standards III.D.1. and D.2. were editorially amended for clarity as suggested in comments.

Standard III.D.3. on the location of combustion engines has been amended to make it consistent with the OSHA requirement that they be located no closer than 100 feet from the well bore, unless equipped with arresters and/or water cooled exhaust manifolds.

E. Special Drilling Operations

Numerous comments were received concerning this section. Many of these addressed the minimum distances specified. In response to these comments, all distances have been standardized and reduced to 100 feet. For example, the length of the blooie line, required to be 150 feet from the well bore in the proposed rulemaking, is now 100 feet. In all cases, the distances specified in this final rulemaking pertaining to Special Drilling Operations are consistent with similar requirements of OSHA.

Another comment suggested modifying the minimum standard concerning the straight run on the blooie line. This has been modified by the addition of the words "unless otherwise approved" because there may be instances where a straight run may not be feasible.

One comment suggested removal of the minimum standard requiring deduster equipment during air/gas drilling. This comment was not adopted due to the potentially serious environmental consequences. If an operator has a special situation and can justify not using deduster equipment, he can request a variance of the authorized representative as detailed elsewhere in this Order.

As suggested in a comment, the minimum standard for containment of cuttings and the circulating medium has been amended to specify the required mode of containment.

Several comments dealt with the draft minimum standard requiring an automatic igniter and a continuous pilot light on the blooie line. This standard has been modified to provide that either of these methods is acceptable rather than both being required. Under certain circumstances the authorized officer may require both in approving a particular APD if redundancy is desirable; however, it is not necessary to require both as a minimum standard.

At the suggestion of several comments, the minimum standard concerning mud mixing equipment, mixing water, etc., was rewording for clarity.

F. Surface Use

Comments from within government and from industry were received concerning the minimum standards portion of the Surface Use Requirements. These comments did not particularly object to the stated minimum standard in the draft, but argued that this Order is not the appropriate place to outline specific surface standards. Several comments suggested that a revision of Onshore Order No. 1 would be more appropriate. BLM has scheduled such a revision to Onshore Order No. 1. In addition, under the Federal Onshore Oil and Gas Leasing Reform Act of 1987, management of surface use on National Forest lands is required to be coordinated with the Forest Service. In response to the comments, the minimum standards portion of the Surface Use Requirements has been modified in this final rulemaking to contain a general standard to comply with the approved APD rather than specific standards.

G. Drilling Abandonment Requirements

Comments received on the drilling abandonment section of this Order are discussed below as they address specific provisions.

Two comments suggested amendment of the provision on types of mineral deposits requiring protection. The term "prospectively valuable deposit of minerals" has been added in the introductory paragraph of this section and to the definitions section of the Order to clarify an unnecessarily vague reference to "other minerals".

Another comment requested that the deadline for following up in writing an oral request for abandonment be increased from 5 business days to 10. This comment has not been adopted because an operator can ask for an extension if additional time is needed.

The minimum standard in paragraph III.G.1.i.a. on migrating fluids was modified as suggested in comments to make it clear that gases as well as liquids are considered fluids with a potential to migrate, and that formations containing them shall be cemented across in the prescribed manner. Another comment on this section wanted the term "fluid" to be defined as fresh water or hydrocarbon. This suggestion was rejected as being too restrictive. For example, salt water or nitrogen gas zones require cementing across so that contamination of other zones by migration does not occur.

The requirement in the draft Onshore Order specifying protection of lost circulation zones during plugging has been removed at the suggestion of comments. However, as stated elsewhere in the Drilling Abandonment Requirements, the hole must be in a static condition at the time any plugs are placed, or the placement of additional plugs and/or cement may be required. Therefore, to assure a static well bore condition, lost circulation zones must be stabilized or isolated in some manner before further plugging can occur higher up in the hole.

The minimum standard in paragraph III.G.1.i.b. was modified as explained earlier in this section to clarify the types of minerals needing protection.

The minimum standard in paragraph III.G.1.ii. attracted comments questioning the reasoning behind the requirement of an additional 10 percent of slurry for each 1,000 feet of depth. This factor is included to compensate for mud contamination (and not as a washout factor as supposed in some comments) in pumping the plug to the required depth. For a 100 foot plug located at 10,000 feet, this would amount to an additional 100 feet of cement column. Similar comments were received concerning this requirement as it applies to cased holes. Since the logic for requiring this additional slurry is the same, those comments are not addressed further in this section.

The minimum standard in paragraph III.G.1.iv. was modified as suggested by comments to make it clear that it pertains to thick sections of a single formation. Another comment on this section preferred that extremely thick sections be defined as being 400 feet in thickness. This suggestion was not adopted because there are too many variables to select a particular number as "extremely thick". The authorized officer and the operator requesting plugging instructions need flexibility in determining whether a portion of a formation is extremely thick.

The minimum standard in paragraph III.G.1.v. on plugging open holes was modified in this final rulemaking as suggested by a comment to recognize that plugs shall be placed across in-gauge sections of the hole every 3,000 feet, unless otherwise approved by the authorized officer. This change will enable the authorized officer the flexibility to modify this requirement on a case-by-case basis.

Two comments addressed the minimum standard in paragraph III.G.2.iii., the amount of cement needed to cap a bridge plug when a bailer is used. The comments suggested 20 feet instead of the proposed 35 feet. The comments were rejected because a lesser amount is not considered adequate. This recognizes a policy based on Bureau of Land Management experience, requiring 35 feet, that has been in place for many years. The requirement of 35 feet is already less than the 50 feet of plug required to cap the bridge plug when not using a bailer.

Paragraph III.G.5. was amended because of a typographical error to require that at least the top 50 feet (instead of 100 feet) of the annulus shall be plugged.

The section on isolating medium, paragraph III.G.6. in this final rulemaking, was modified to clarify the types of minerals requiring protection as explained above. Another comment on this section suggested deleting the 15,000 pound maximum tagging weight provision. This comment was adopted because setting a maximum weight to be used to tag a plug is unncessary.

The minimum standard in paragraph III.G.8. of this final rulemaking has been modified from the draft as suggested by a comment to clarify the cement plug requirement at the surface. This standard now states that the top 50 feet of the hole shall be plugged and removes the reference restricting this plug to the smallest casing extending to the surface. All annuluses within 50 feet of the surface are to be plugged off. Another comment on this provision suggested 100 feet of plug rather than 50 feet. This comment was not adopted because 50 feet is adequate if propoerly placed.

Paragraph III.G.10. concerning the surface cap was modified as suggested by comments to improve the clarity and sequence. Another comment on this minimum standard questioned the purpose of the weep hole. This term is defined and explained in the definitions section.

Discussion of IV Variances From Minimum Standard

The only comments on this section requested the addition of provision for oral variances during emergency situations. The final rulemaking adopts this suggestion, although such requests by the operator are required to be followed up by a written request as specified in the new wording. This change was incorporated in recognition that an emergency or other event that could not have been reasonably foreseen may occur during drilling operations.

Discussion of Attachments

Several comments were received concerning the choke manifold equipment configurations. A statement has been added to each of the pressure systems diagrams in response to the comments to indicate that the configuration of the equipment may

vary. This was the original intent and the addition of the statement improves clarity.

Another comment requested that one of the two valves on the bleed line to the pit be removed from the requirement for equipment for pressure ratings of 3M and above. This comment was adopted for 3M systems, but was rejected for higher rated systems due to the higher pressures involved.

The principal authors of this proposed rulemaking are Howard Lemm of the Utah State Office, Carl Budd of the Rock Springs District Office, Hal Stoops of the Bakersfield District Office, and Bob Kent of the Washington Office, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby designated that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The information collection requirements contained in 43 CFR Part 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0134 and 1004–0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

October 11, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 183 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of Feburary 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty., Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

2. Section 3164.1(b) is amended by adding the following entry to the table which is part of § 3164.1(b):

§ 3164.1 Onshore oil and gas orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	Federal Register reference	Supersedes
1	Approval of operations	November 12, 1983	48 FR 48916 and 48 FR 56226	NTL-6
2	Drilling operations			None

Note.—Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Note.—This appendix is published for information only and will not appear in the Code of Federal Regulations.

Appendix—Text of Oil and Gas Order No. 2.

Onshore Oil and Gas Order No. 2

Drilling Operations on Federal and Indian Oil and Gas Leases

I. Introduction.
- A. Authority.
- B. Purpose.
- C. Scope.
- D. General.

II. Definitions.

III. Requirements.
- A. Well Control Requirements.
- B. Casing and Cementing Requirements.
- C. Mud Program Requirements.
- D. Drill Stem Testing Requirements.
- E. Special Drilling Operations.
- F. Surface Use.
- G. Drilling Abandonment.

IV. Variances from Minimum Standards.

Attachments.

I. Diagrams of Choke Manifold Requirements.

II. Sections from 43 CFR Subparts 3163 and 3165.

Onshore Oil and Gas Order No. 2

Drilling Operations on Federal and Indian Oil and Gas Leases

I. Introduction

A. Authority

This order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian (except Osage tribe) oil and gas leases that have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at: § 3162.3–1 *Drilling Applications and Plans;* § 3162.3–4 *Well Abandonment;* § 3162.4–1 *Well Records and Reports;* § 3162.4–3 *Samples, Tests, and Surveys;* § 3162.5–1 *Environmental Obligations;* § 3162.5–2 *Control of Wells;* § 3162.5–2(a) *Drilling Wells;* § 3162.5–3 *Safety Precautions;* and Subpart 3163 Noncompliance and Assessment.

B. Purpose

This onshore Order details the Bureau's uniform national standards for the minimum levels of performance expected from lessees and operators when conducting drilling operations on Federal and Indian lands (except Osage Tribe) and for abandonment immediately following drilling. The

purpose also is to identify the enforcement actions that will result when violations of the minimum standards are found, and when those violations are not abated in a timely manner.

C. Scope

This Order is applicable to all onshore Federal and Indian (except Osage Tribe) oil and gas leases.

D. General

1. If an operator chooses to use higher rated equipment than that authorized in the Application for Permit to Drill (APD), testing procedures shall apply to the approved working pressures, not the upgraded higher working pressures.

2. Some situations may exist either on a well-by-well or field-wide basis whereby it is commonly accepted practice to vary a particular minimum standard(s) established in this Order. This situation may be resolved by requesting a variance (See section IV of this Order), by the inclusion of a stipulation to the APD, or by the issuance of a Notice to Lessees and Operators (NTL) by the appropriate BLM office.

3. When a violation is discovered, and if it does not cause or threaten immediate substantial and adverse impact on public health and safety, the environment, production accountability or royalty income, it will be classified as minor. The violation may be reissued as a major violation if not corrected during the abatement period and continued drilling has changed the adverse impact of the violation so that it meets the specific definition of a major violation.

4. This Onshore Order is not intended to circumvent the reporting requirements or compliance aspects that may be stated elsewhere in Existing NTL's, Onshore Orders, etc. A lessee's compliance with the requirements of the regulations in this Part shall not relieve the lessee of the obligation to comply with other applicable laws and regulations in accordance with 43 CFR 3162.5–1(c). Lessee's should give special attention to the automatic assessment provisions in 43 CFR 3163.1(b).

5. This Order is based upon the assumption that operations have been approved in accordance with 43 CFR Part 3160 and Onshore Oil and Gas Order No. 1. Failure to obtain approval prior to commencement of drilling or related operations shall subject the operator to immediate assessment under 43 CFR 3163.1(b)(2).

II. Definitions.

A. Abnormal Pressure Zone means a zone that has either pressure above or below the normal gradient for an area and/or depth.

B. Bleed Line means the vent line that bypasses the chokes in the choke manifold system; also referred to as Panic Line.

C. Blooie Line means a discharge line used in conjunction with a rotating head.

D. Drilling Spool means a connection component with both ends either flanged or hubbed, with an internal diameter at least equal to the bore of the casing, and with smaller side outlets for connecting auxiliary lines.

E. Exploratory Well means any well drilled beyond the known producing limits of a pool.

F. Fill-up Line means the line used to fill the hole when the drill pipe is being removed from the well. It is usually connected to a 2-inch collar that is welded into a drilling nipple.

G. Flare Line means a line used to carry gas away from the rig to be burned at a safer location. The gas comes from the degasser, gas buster, separator, or when drill stem testing, directly from the drill pipe.

H. Functionally Operated means activating equipment without subjecting it to well-bore pressure.

I. Isolating means using cement to protect, separate, or segregate usable water and mineral resources.

J. Lease means any contract, profit-share agreement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas (See 43 CFR 3160.0–5).

K. Lessee means a person holding record title in a lease issued by the United States (See 43 CFR3160.0–5).

L. Make-up Water means water that is used in mixing slurry for cement jobs and plugging operations, and is compatible with the cement constituents being used.

M. Manual Locking Device means any manually activated device, such as hand wheels, etc., that is used for the purpose of locking the preventer in the closed position.

N. Mud for Plugging Purposes means a slurry of bentonite or similar flocculent/viscosifier, water, and additives needed to achieve the desired weight and consistency to stabilize the hole.

O. Mudding Up means adding materials and chemicals to water to control the viscosity, weight, and filtrate loss of the circulating system.

P. Operating Rights Owner (or Owner) means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

Q. Operational means capable of functioning as designed and installed without undue force or further modification.

R. Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer his/her responsibility for the operations conducted in the leased lands or a portion thereof.

S. Precharge Pressure means the nitrogen pressure remaining in the accumulator after all the hydraulic fluid has been expelled from beneath the movable barrier.

T. Prompt Correction means immediate correction of violations, with drilling suspended if required in the discretion of the authorized officer.

U. Prospectively Valuable Deposit of Minerals means any deposit of minerals that the authorized officer determines to have characteristics of quantity and quality that warrant its protection.

V. Tagging the Plug means running in the hole with a string of tubing or drill pipe and placing the weight of that string on the plug. Other methods of tagging the plug may be approved by the authorized officer.

W. Targeted Tee or Turn means a fitting used in pressure piping in which a bull plug or blind flange of the same pressure rating as the rest of the approved system is installed at the end of a tee or cross, opposite the fluid entry arm, to change the direction of flow and to reduce erosion.

X. 2M, 3M, 5M, 10M, and 15M mean the pressure ratings used for equipment with a working pressure rating of the equivalent thousand pounds per square inch (psi) (2M=2,000 psi, 3M=3,000 psi, etc.).

Y. Usable Water means generally those waters containing up to 10,000 ppm of total dissolved solids.

Z. Weep Hole means a small hole that allows pressure to bleed off through the metal plate used in covering well bores after abandonment operations.

III. Requirements

A. Well Control Requirements

1. Blowout preventer (BOP) and related equipment (BOPE) shall be installed, used, maintained, and tested in a manner necessary to assure well control and shall be in place and operational prior to drilling the surface casing shoe unless otherwise approved by the APD. Commencement of drilling without the approved BOPE installed, unless otherwise approved, shall subject

the operator to immediate assessment under 43 CFR 3163.1(b)(1). The BOP and related control equipment shall be suitable for operations in those areas which are subject to sub-freezing conditions. The BOPE shall be based on known or anticipated sub-surface pressures, geologic conditions, accepted engineering practice, and surface environment. Item number 7 of the 8 point plan in the APD specifically addresses expected pressures. The working pressure of all BOPE shall exceed the anticipated surface pressure to which it may be subjected, assuming a partially evacuated hole with a pressure gradient of 0.22 psi/ft.

2. The gravity of the violation for many of the well control minimum standards listed below are shown as minor. However, very short abatement periods in this Order are often specified in recognition that by continuing to drill, the violation which was originally determined to be of a minor nature may cause or threaten immediate, substantial and adverse impact on public health and safety, the environment, production accountability, or royalty income, which would require its reclassification as a major violation.

a. *Minimum standards and enforcement provisions for well control equipment.* i. A well control device shall be installed at the surface that is capable of complete closure of the well bore. This device shall be closed whenever the well is unattended.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

ii. 2M system:

—Annular preventer, double ram, or two rams with one being blind and one being a pipe ram *

—Kill line (2 inch minimum)

—1 kill line valve (2 inch minimum)

—1 choke line valve

—2 chokes (refer to diagram in Attachment 1)

—Upper kelly cock valve with handle available

—Safety valve and subs to fit all drill strings in use

—Pressure gauge on choke manifold

—2 inch minimum choke line

—Fill-up line above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

*Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

iii. 3M system:

—Annular preventers *

—Double ram with blind rams and pipe rams *

—Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) *

—Kill line (2 inch minimum)

—A minimum of 2 choke line valves (3 inch minimum) *

—3 inch diameter choke line

—2 kill line valves, one of which shall be a check valve (2 inch minimum) *

—2 chokes (refer to diagram in Attachment 1)

—Pressure gauge on choke manifold

—Upper kelly cock valve with handle available

—Safety valve and subs to fit all drill string connections in use

—All BOPE connections subjected to well pressure shall be flanged, welded, or clamped *

—Fill-up line above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

iv. 5M system:

—Annular preventer *

—Pipe ram, blind ram, and, if conditions warrant, as specified by the authorized officer, another pipe ram shall also be required *

—A second pipe ram preventer or variable bore pipe ram preventer shall be used with a tapered drill string

—Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) *

—3 inch diameter choke line

—2 choke line valves (3 inch minimum) *

—Kill line (2 inch minimum)

—2 chokes with 1 remotely controlled from rig floor (refer to diagram in Attachment 1)

—2 kill line valves and a check valve (2 inch minimum) *

—Upper kelly cock valve with hand available

—When the expected pressures approach working pressure of the system, 1 remote kill line tested to stack pressure (which shall run to the outer edge of the substructure and be unobstructed)

—Lower kelly cock valve with handle available

—Safety valve(s) and subs to fit all drill string connections in use

—Inside BOP or float sub available

—Pressure gauge on choke manifold

—All BOPE connections subjected to well pressure shall be flanged, welded, or clamped *

—Fill-up line above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

v. 10M & 15M system:

—Annular preventer *

—2 pipe rams *

—Blind rams *

—Drilling spool, or blowout preventer with 2 side outlets (choke side shall be a 3-inch minimum diameter, kill side shall be at least 2-inch diameter) *

—3 inch choke line *

—2 kill line valves (2 inch minimum) and check valve *

—Remote kill line (2 inch minimum) shall run to the outer edge of the substructure and be unobstructed

—Manual and hydraulic choke line valves (3 inch minimum) *

—3 chokes, 1 being remotely controlled (refer to diagram in Attachment 1)

—Pressure gauge on choke manifold

—Upper kelly cock valve with handle available

—Lower kelly cock valve with handle available

—Safety valves and subs to fit all drill string connections in use

—Inside BOP or float sub available

—Wear ring in casing head

—All BOPE connections subjected to well pressure shall be flanged, welded, or clamped *

—Fill-up line installed above the uppermost preventer.

Violation: Minor (all items unless marked by asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

vi. If repair or replacement of the BOPE is required after testing, this work shall be performed prior to drilling out the casing shoe.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

vii. When the BOPE cannot function to secure the hole, the hole shall be secured using cement, retrievable packer or a bridge plug packer, bridge plug, or other acceptable approved method to assure safe well conditions.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal. Abatement Period: Prompt correction required.

b. *Minimum standards and enforcement provisions for choke manifold equipment.* i. All choke lines shall be straight lines unless turns use tee blocks or are targeted with running tees, and shall be anchored to prevent whip and reduce vibration.

Violation: Minor

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

ii. Choke manifold equipment configuration shall be functionally equivalent to the appropriate example diagram shown in Attachment 1 of this Order.

Violation: Minor

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

iii. All valves (except chokes) in the kill line, choke manifold, and choke line shall be a type that does not restrict the flow (full opening) and that allows a straight through flow (same enforcement as item ii).

iv. Pressure gauges in the well control system shall be a type designed for drilling fluid service (same enforcement as above).

c. *Minimum standards and enforcement provisions for pressure accumulator system.* i. 2M system—accumulator shall have sufficient capacity to close all BOP's and retain 200 psi above precharge. Nitrogen bottles that meet manufacturer's specifications may be used as the backup to the required independent power source.

Violation: Minor

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

ii. 3M system—accumulator shall have sufficient capacity to open the hydraulically-controlled choke line valve (if so equipped), close all rams plus the annual preventer, and retain a minimum of 200 psi above precharge on the closing manifold without the use of the closing unit pumps. This is a minimum requirement. The fluid reservoir capacity shall be double the accumulator capacity and fluid level maintained at manufacturer's recommendations. The 3M system shall have 2 independent power sources to close the preventers. Nitrogen bottles (3 minimum) may be 1 of the independent power sources and, if so, shall maintain a charge equal to the manufacturer's specifications.

Violation: Minor.

Corrective Action: install the equipment as specified.

Normal Abatement Period: 24 hours.

iii. 5M and higher system—accumulator shall have sufficient capacity to open the hydraulically-controlled gate valve (if so equipped) and close all rams plus the annular preventer (for 3 ram systems add a 50 percent safety factor to compensate for any fluid loss in the control system or preventers) and retain a minimum pressure of 200 psi above precharge on the closing manifold without use of the closing unit pumps. The reservoir capacity shall be double the accumulator capacity, and the fluid level shall be maintained at manufacturer's recommendations. Two independent sources of power shall be available for powering the closing unit pumps. Sufficient nitrogen bottles are suitable as a backup power source only, and shall be recharged when the pressure falls below manufacturer's specifications.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

d. *Minimum standards and enforcement provisions for accumulator precharge pressure test.* This test shall be conducted prior to connecting the closing unit to the BOP stack and at least once every 6 months. The accumulator pressure shall be corrected if the measured precharge pressure is found to be above or below the maximum or minimum limit specified below (only nitrogen gas may be used to precharge):

Accumulator working pressure rating	Minimum acceptable operating pressure	Desired precharge pressure	Maximum acceptable precharge pressure	Minimum acceptable precharge pressure
1,500 psi	1,500 psi	750 psi	800 psi	700 psi
2,000 psi	2,000 psi	1,000 psi	1,100 psi	900 psi
3,000 psi	3,000 psi	1,000 psi	1,100 psi	900 psi

Violation: Minor.

Corrective Action: Perform test.

Normal Abatement Period: 24 hours.

e. *Minimum standards and enforcement provisions for power availability.* Power for the closing unit pumps shall be available to the unit at all times so that the pumps shall automatically start when the closing unit manifold pressure has decreased to a pre-set level.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

f. *Minimum standards and enforcement provisions for accumulator pump capacity.* Each BOP closing unit shall be equipped with sufficient number and sizes of pumps so that, with the accumulator system isolated from service, the pumps shall be capable of opening the hydraulically-operated gate valve (if so equipped), plus closing the annular preventer on the smallest size drill pipe to be used within 2 minutes, and obtain a minimum of 200 psi above specified accumulator precharge pressure.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

g. *Minimum standards and enforcement provisions for locking devices.* A manual locking device (i.e., hand wheels) or automatic locking devices shall be installed on all systems of 2M or greater. A valve shall be installed in the closing line as close as possible to the annular preventer to act as a locking device. This valve shall be maintained in the open position and shall be closed only when the power source for the accumulator system is inoperative.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

h. *Minimum standards and enforcement provisions for remote*

controls. Remote controls shall be readily accessible to the driller. Remote controls for all 3M or greater systems shall be capable of closing all preventers. Remote controls for 5M or greater systems shall be capable of both opening and closing all preventers. Master controls shall be at the accumulator and shall be capable of opening and closing all preventers and the choke line valve (if so equipped). No remote control for a 2M system is required.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

i. *Minimum standards and enforcement provisions for well control equipment testing.* i. Perform all tests described below using clear water or an appropriate clear liquid for subfreezing temperatures with a viscosity similar to water.

ii. Ram type preventers and associated equipment shall be tested to approved (see item I.D.1. of this order) stack working pressure if isolated by test plug or to 70 percent of internal yield pressure of casing if BOP stack is not isolated from casing. Pressure shall be maintained for at least 10 minutes or until requirements of test are met, whichever is longer. If a test plug is utilized, no bleed-off of pressure is acceptable. For a test not utilizing a test plug, if a decline in pressure of more than 10 percent in 30 minutes occurs, the test shall be considered to have failed. Valve on casing head below test plug shall be open during test of BOP stack.

iii. Annular type preventers shall be tested to 50 percent of rated working pressure. Pressure shall be maintained at least 10 minutes or until provisions of test are met, whichever is longer.

iv. As a minimum, the above test shall be performed:

A. when initially installed;

B. whenever any seal subject to test pressure is broken;

C. following related repairs; and

D. at 30-day intervals.

v. Valves shall be tested from working pressure side during BOPE tests with all down stream valves open.

vi. When testing the kill line valve(s), the check valve shall be held open or the ball removed.

vii. Annular preventers shall be functionally operated at least weekly.

viii. Pipe and blind rams shall be activated each trip, however, this function need not be performed more than once a day.

xi. A BOPE pit level drill shall be conducted weekly for each drilling crew.

x. Pressure tests shall apply to all related well control equipment.

xi. All of the above described tests and/or drills shall be recorded in the drilling log.

Violation: Minor.

Corrective action: Perform the necessary test or provide documentation.

Normal Abatement Period: 24 hours or next trip, as most appropriate.

B Casing and Cementing Requirements

The proposed casing and cementing programs shall be conducted as approved to protect and/or isolate all usable water zones, potentially productive zones, lost circulation zones, abnormally pressured zones, and any prospectively valuable deposits of minerals. Any isolating medium other than cement shall receive approval prior to use. The casing setting depth shall be calculated to position the casing seat opposite a competent formation which will contain the maximum pressure to which it will be exposed during normal drilling operations. Determination of casing setting depth shall be based on all relevant factors, including: presence/absence of hydrocarbons; fracture gradients; usable water zones; formation pressures; lost circulation zones; other minerals; or other unusual characteristics. All indications of usable water shall be reported.

—Minimum design factors for tensions, collapse, and burst that are incorporated into the casing design by an operator/leasee shall be submitted to the authorized operator for his review and approval along with the APD for all exploratory wells or as otherwise specified by the authorized officer.

—Casing design shall assume formation pressure gradients of 0.44 to 0.50 psi per foot for exploratory wells (lacking better data).

—Casing design shall assume fracture gradients from 0.70 to 1.00 psi per foot for exploratory wells (lacking better data).

—Casing collars shall have a minimum clearance of 0.422 inches on all sides in the hole/casing annulus, with recognition that variances can be granted for justified exceptions.

—All waiting on cement times shall be adequate to achieve a minimum of 500 psi compressive strength at the casing shoe prior to drilling out.

1. Minimum Standards and Enforcement Provisions for Casing and Cementing.

a. All casing, except the conductor casing, shall be new or reconditioned and tested used casing that meets or exceeds API standards for new casing.

Violation: Major

Corrective Action: Perform remedial action as specified by the authorized officer.

Normal Abatement Period: Prompt correction required.

b. For liners, a minimum of 100 feet of overlap between a string of casing and the next larger casing is required. The interval of overlap shall be sealed and tested. The liner shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and the next larger string has been achieved. The test pressure shall be the maximum anticipated pressure to which the seal will be exposed. No test shall be required for liners that do not incorporate or need a seal mechanism.

Violation: Minor.

Corrective Action: Perform remedial action as specified by the authorized officer.

Normal Abatement Period: Upon determination of corrective action.

c. The surface casing shall be cemented back to surface either during the primary cement job or by remedial cementing.

Violation: Major.

Corrective Action: Perform remedial cementing.

Normal Abatement Period: Prompt correction required.

d. All of the above described tests shall be recorded in the drilling log.

Violation: Minor.

Corrective Action: Perform the necessary test or provide documentation.

Normal Abatement Period: 24 hours.

e. All indications of usable water shall be reported to the authorized officer prior to running the next string of casing or before plugging orders are requested, whichever occurs first.

Violation: Major.

Corrective Action: Report information as required.

Normal Abatement Period: Prompt correction required.

f. Surface casing shall have centralizers on every fourth joint of casing starting with the shoe joint and up to the bottom of the cellar.

Violations: Major.

Corrective Action: Logging/testing may be required to determine the quality of the job. Recementing may then be specified.

Normal Abatement Period: Prompt correction upon determination of corrective action.

g. Top plugs shall be used to reduce contamination of cement by displacement fluid. A bottom plug or other acceptable technique, such as a suitable preflush fluid, inner string cement method, etc., shall be utilized to

help isolate the cement from contamination by the mud fluid being displaced ahead of the cement slurry.

Violation: Major

Correction Action: Logging may be required to determine the quality of the cement job. Recementing or further recementing may then be specified.

Normal Abatement Period: Based upon determination of corrective action.

h. All casing strings below the conductor shall be pressure tested to 0.22 psi per foot of casing string length or 1500 psi, whichever is greater, but not to exceed 70 percent of the minimum internal yield. If pressure declines more than 10 percent in 30 minutes, corrective action shall be taken.

Violation: Minor.

Corrective Action: Perform the test and/or remedial action as specified by the authorized officer.

Normal Abatement Period: 24 hours.

i. On all exploratory wells, and on that portion of any well approved for a 5M BOPE system or greater, a pressure integrity test of each casing shoe shall be performed. Formation at the shoe shall be tested to a minimum of the mud weight equivalent anticipated to control the formation pressure to the next casing depth or at total depth of the well. This test shall be performed before drilling more than 20 feet of new hole.

Violation: Minor.

Corrective Action: Perform the specified test.

Normal Abatement Period: 24 hours.

C. Mud Program Requirements

The characteristics, use, and testing of drilling mud and the implementation of related drilling procedures shall be designed to prevent the loss of well control. Sufficient quantities of mud materials shall be maintained or readily accessible for the purpose of assuring well control.

Minimum Standards and Enforcement Provisions for Mud Program and Equipment

1. Record slow pump speed on daily drilling report after mudding up.

Violation: Minor.

Corrective Action: Record required information.

Normal Abatement Period: 24 hours.

2. Visual mud monitoring equipment shall be in place to detect volume changes indicating loss or gain of circulating fluid volume.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

3. When abnormal pressures are anticipated. Electronic/mechanical mud monitoring equipment shall be required, which shall include as a minimum; pit volume totalizer (PVT); stroke counter; and flow sensor.

Violation: Minor.

Corrective Action: Install necessary instrumentation.

Normal Abatement Period: 24 hours.

4. A mud test shall be performed every 24 hours after mudding up to determine, as applicable: density, viscosity, gel strength, filtration, and pH.

Violation: Minor.

Corrective Action: Perform necessary tests.

Normal Abatement Period: 24 hours.

5. A trip tank shall be used on 10M and 15M systems and on upgraded 5M systems as determined by the authorized officer.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

6. a. Gas detecting equipment shall be installed in the mud return system for exploratory wells or wells where abnormal pressure is anticipated, and hydrocarbon gas shall be monitored for pore pressure changes.

b. Hydrogen sulfide safety and monitoring equipment shall be available and in use where atmospheric concentrations of hydrogen sulfide of 20 ppm or greater are anticipated.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

7. All flare systems shall be designed to gather and burn all gas. The flare line(s) discharge shall be located not less than 100 feet from the well head, having straight lines unless turns are targeted with running tees, and shall be positioned downwind of the prevailing wind direction and shall be anchored. The flare system shall have an effective method for ignition. Where noncombustible gas is likely or expected to be vented, the system shall be provided supplemental fuel for ignition and to maintain a continuous flare.

Violation: Major.

Corrective Action: Install equipment as specified.

Normal Abatement Period: 24 hours.

8. A mud-gas separator (gas buster) shall be installed and operable for all systems of 10M or greater and for any system where abnormal pressure is anticipated beginning at a point at least 500 feet above any anticipated hydrocarbon zone of interest.

Violation: Minor.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

D. Drill Stem Testing Requirements

Initial opening of drill stem test tools shall be restricted to daylight hours unless specific approval to start during other hours is obtained from the authorized officer. However, DSTs may be allowed to continue at night if the test was initiated during daylight hours and the rate of flow is stabilized and if adequate lighting is available (i.e., lighting which is adequate for visibility and vapor-proof for safe operations). Packers can be released, but tripping shall not begin before daylight, unless prior approval is obtained from the authorized officer. Closed chamber DSTs may be accomplished day or night.

Minimum Standards for Drill Stem Testing

1. A DST that flows to the surface with evidence of hydrocarbons shall be either reversed out of the testing string under controlled surface conditions, or displaced into the formation prior to pulling the test tool. This would involve providing some means for reverse circulation.

Violation: Major.

Corrective Action: Contingent on circumstances and as specified by the authorized officer.

Normal Abatement Period: Prompt correction required.

2. Separation equipment required for the anticipated recovery shall be properly installed before a test starts.

Violation: Major.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

3. All engines within 100 feet of the wellbore that are required to "run" during the test shall have spark arresters or water cooled exhausts.

Violation: Major.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

E. Special Drilling Operations

1. In addition to the equipment already specified elsewhere in this onshore order, the following equipment shall be in place and operational during air/gas drilling:

—Properly lubricated and maintained rotating head *

—Spark arresters on engines or water cooled exhaust *

—Blooie line discharge 100 feet from well bore and securely anchored

—Straight run on blooie line unless otherwise approved

—Deduster equipment *

—All cuttings and circulating medium shall be directed into a reserve or blooie pit *

—Float valve above bit *

—Automatic igniter or continuous pilot light on the blooie line *

—Compressors located in the opposite direction from the blooie line a minimum of 100 feet from the well bore

—Mud circulating equipment, water, and mud materials (does not have to be premixed) sufficient to maintain the capacity of the hole and circulating tanks or pits

Violation: Minor (unless marked by an asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

2. Hydrogen sulphide operation is specifically addressed under Onshore Oil and Gas Order No. 6.

F. Surface Use

Onshore Oil and Gas Order No. 1 specifically addresses surface use. That Order provides for safe operations, adequate protection of surface resources and uses, and other environmental components. The operator/lessee is responsible for, and liable for, all building, construction, and operating activities and subcontracting activities conducted in association with the APD. Requirements and special stipulations for surface use are contained in or attached to the approved APD. Minimum Standards and Enforcement Provisions for Surface Use.

The requirements and stipulations of approval shall be strictly adhered to by the operator/lessee and any contractors.

Violation: If a violation is identified by the authorized officer he shall determine whether it is major or minor, considering the definitions in 43 CFR 3160.0–5, and shall specify the appropriate corrective action and abatement period.

G. Drilling Abandonment Requirements

The following standards apply to the abandonment of newly drilled dry or non-productive wells in accordance with 43 CFR 3162.3–4 and section V of Onshore Oil and Gas Order No. 1. Approval shall be obtained prior to the commencement of abandonment. All formations bearing usable-quality water, oil, gas, or geothermal resources, and/or a prospectively valuable deposit of minerals shall be protected. Approval may be given orally by the authorized officer before abandonment operations are initiated. This oral request and approval shall be followed by a written notice of intent to abandon filed not later than the fifth business day following oral approval. Failure to obtain approval prior to commencement of abandonment operations shall result in immediate assessment of under 43 CFR 3163.1(b)(3). The hole shall be in static condition at the time any plugs are placed (this does not pertain to plugging lost circulation zones). Within 30 days of completion of abandonment, a subsequent report of abandonment shall be filed. Plugging design for an abandonment hole shall include the following:

1. Open Hole.

i. A cement plug shall be placed to extend at least 50 feet below the bottom (except as limited by total depth (TD) or plugged back total depth (PBTD)), to 50 feet above the top of:

a. Any zone encountered during drilling which contains fluid or gas with a potential to migrate;

b. Any prospectively valuable deposit of minerals.

ii. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth.

iii. No plug, except the surface plug, shall be less than 25 sacks without receiving specific approval from the authorized officer.

iv. Extremely thick sections of a single formation may be secured by placing 100-foot plugs across the top and bottom of the formation, and in accordance with item ii hereof.

v. In the absence of productive zones or prospectively valuable deposits of minerals which otherwise require placement of cement plugs, long sections of open hole shall be plugged at least every 3,000 feet. Such plugs shall be placed across in-gauge sections of the hole, unless otherwise approved by the authorized officer.

2. Cased Hole. A cement plug shall be placed opposite all open perforations and extend to a minimum of 50 feet below (except as limited by TD or PBTD) to 50 feet above the perforated interval. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth. In lieu of the cement plug, a bridge plug is acceptable, provided:

i. The bridge plug is set within 50 feet to 100 feet above the open perforations;

ii. The perforations are isolated from any open hole below; and

iii. The bridge plug is capped with 50 feet of cement. If a bailer is used to cap this plug, 35 feet of cement shall be sufficient.

3. Casing Removed from Hole. If any casing is cut and recovered, a cement plug shall be placed to extend at least 50 feet above and below the stub. The exposed hole resulting from the casing removal shall be secured as required in items 1i and 1ii hereof.

4. An additional cement plug placed to extend a minimum of 50 feet above and below the shoe of the surface casing (or intermediate string, as appropriate).

5. Annular Space. No annular space that extends to the surface shall be left open to the drilled hole below. If this condition exists, a minimum of the top 50 feet of annulus shall be plugged with cement.

6. Isolating Medium. Any cement plug which is the only isolating medium for a fresh water interval or a zone containing a prospectively valuable deposit of minerals shall be tested by tagging with the drill string. Any plugs placed where the fluid level will not remain static also shall be tested by either tagging the plug with the working pipe string, or pressuring to a minimum pump (surface) pressure of 1,000 psi, with no more than a 10 percent drop during a 15-minute period (cased hole only). If the integrity of any other plug is questionable, or if the authorized officer has specific concerns for which he/she orders a plug to be tested, it shall be tested in the same manner.

7. Silica Sand or Silica Flour. Silica sand or silica flour shall be added to cement exposed to bottom hole static temperatures above 230 °F to prevent heat degradation of the cement.

8. Surface Plug. A cement plug of at least 50 feet shall be placed across all annuluses. The top of this plug shall be placed as near the eventual casing cut-off point as possible.

9. Mud. Each of the intervals between plugs shall be filled with mud of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling such interval. In the absense of other information at the time plugging is approved, a minimum mud weight of 9 pounds per gallon shall be specified.

10. Surface Cap. All casing shall be cut-off at the base of the cellar or 3 feet below final restored ground level (whichever is deeper). The well bore shall then be covered with a metal plate at least ¼ inch thick and welded in place, or a 4-inch pipe, 10-feet in length, 4 feet above ground and embedded in cement as specified by the authorized officer. The well location and identity shall be permanently inscribed. A weep

hole shall be left if a metal plate is welded in place.

11. The cellar shall be filled with suitable material as specified by the authorized officer and the surface restored in accordance with the instructions of the authorized officer.

Minimum Standard

All plugging orders shall be strictly adhered to.

Violation: Major.

Corrective Action: Contingent upon circumstances.

Normal Abatement Period: Prompt correction required.

IV. Variances From Minimum Standard

An operator may request the authorized officer to approve a variance from any of the minimum standards prescribed in section III hereof. All such requests shall be submitted in writting to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, if appropriate, may approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s).

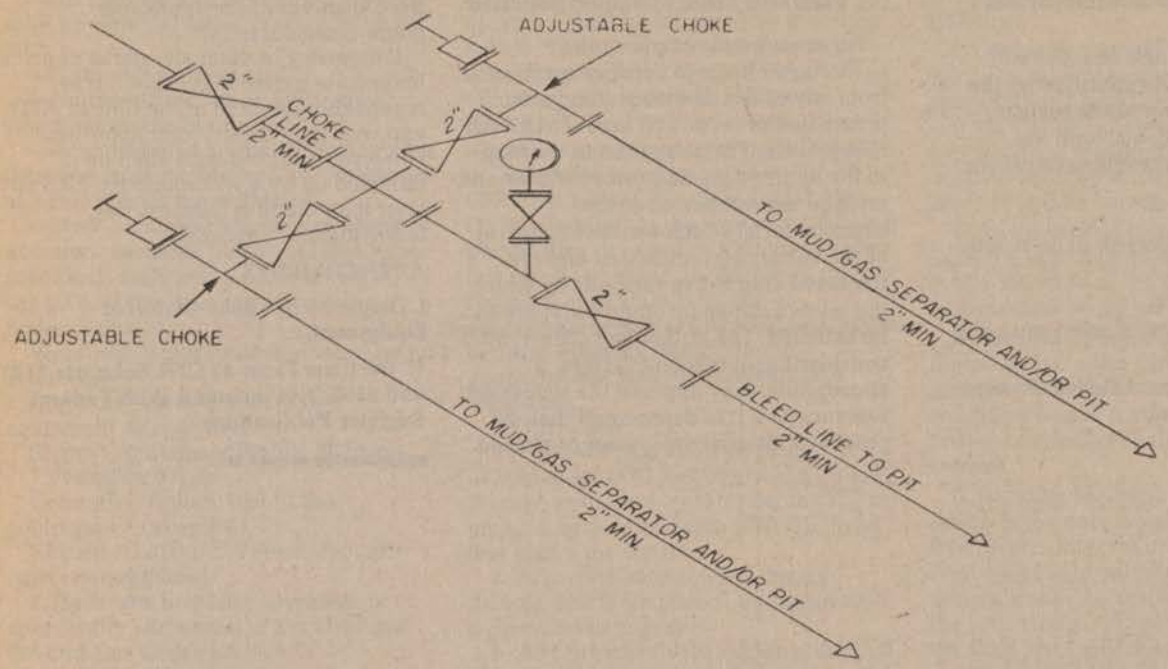
Emergency or other situations of an immediate nature that could not be reasonably foreseen at the time of APD approval may receive oral approval. However, such requests shall be followed up by a written notice filed not later than the fifth business day following oral approval.

ATTACHMENTS

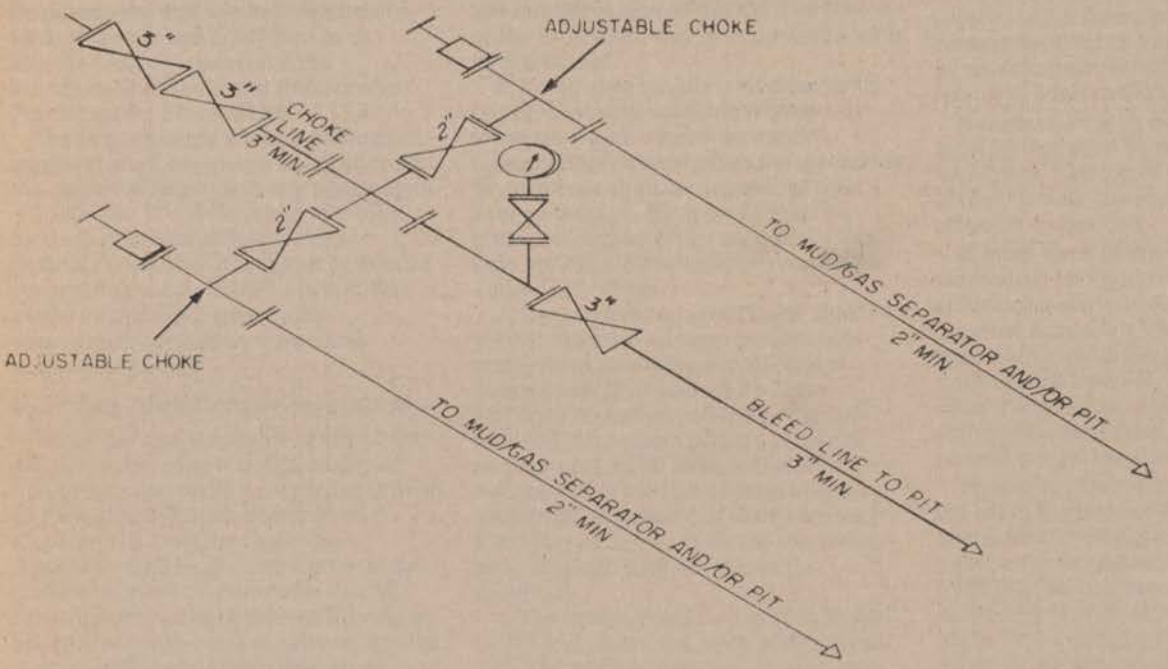
I. Diagrams of Choke Manifold Equipment

II. Sections From 43 CFR Subparts 3163 and 3165 (Not included With Federal Register Publication)

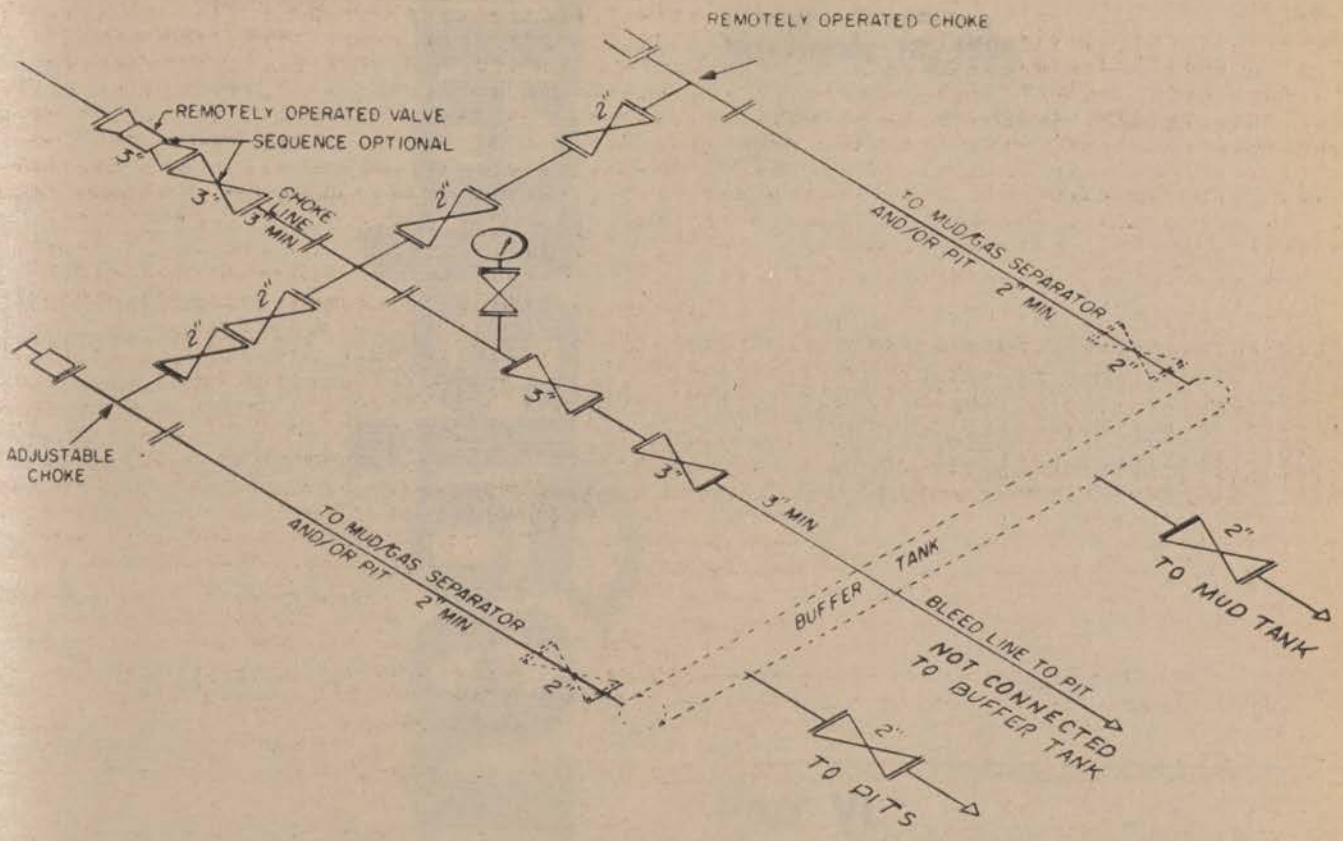
BILLING CODE 4310-84-M



2M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY



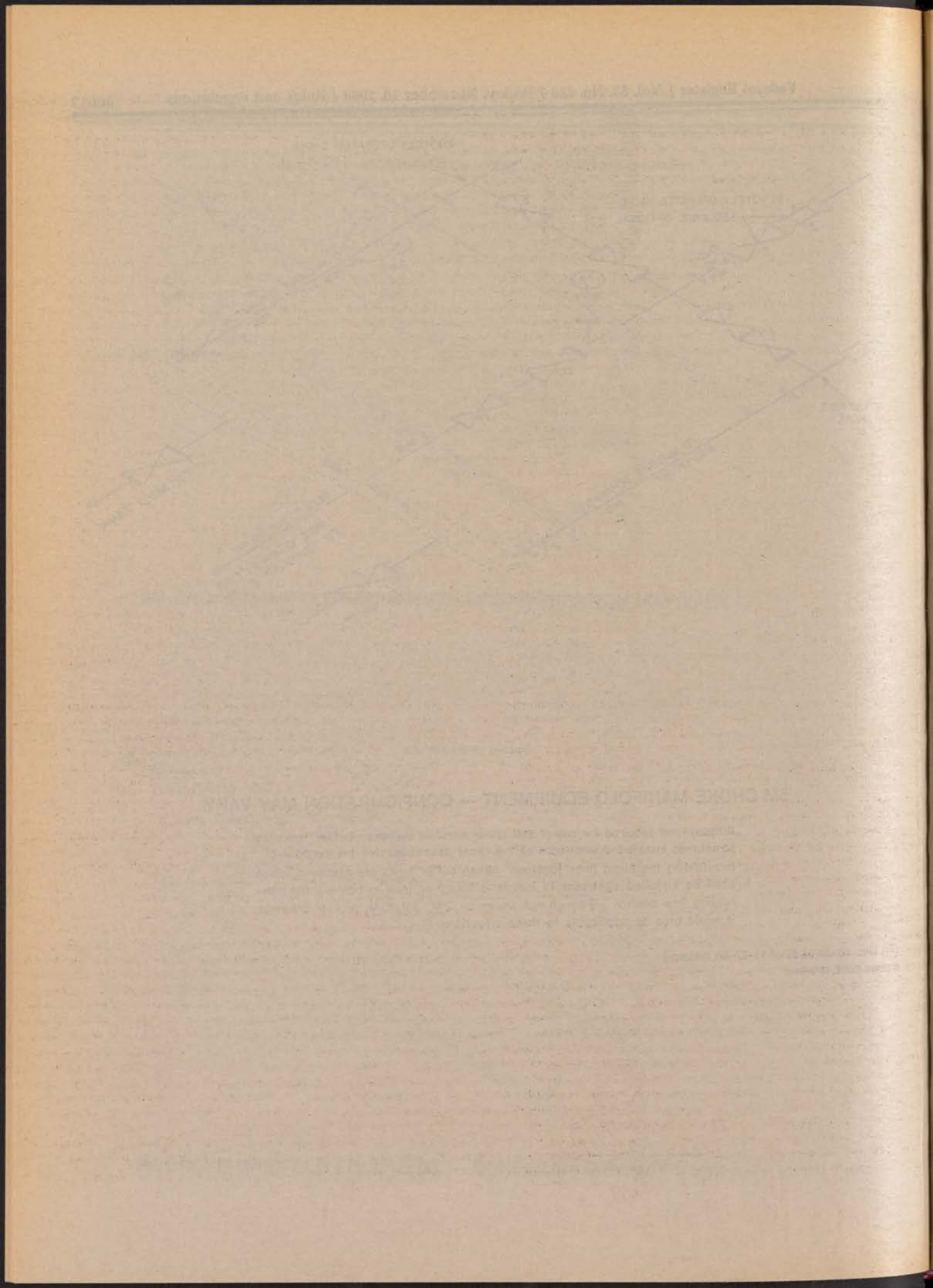
3M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY



5M CHOKE MANIFOLD EQUIPMENT — CONFIGURATION MAY VARY

Although not required for any of the choke manifold systems, buffer tanks are sometimes installed downstream of the choke assemblies for the purpose of manifolding the bleed lines together. When buffer tanks are employed, valves shall be installed upstream to isolate a failure or malfunction without interrupting flow control. Though not shown on 2M, 3M, 10M, or 15M drawings, it would also be applicable to those situations.

[FR Doc. 88-26738 Filed 11-17-88; 8:45 am]
BILLING CODE 4310-84-C



federal register

Friday
November 18, 1988

Part VI

Environmental Protection Agency

Intent To Cancel Certain Pesticide Registrations; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-64010; FRL-3479-1]

Intent To Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel.

SUMMARY: EPA is issuing a notice of intent to cancel certain pesticide registrations under section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and 40 CFR 152.122. The registrations which the Agency intends to cancel are held by registrants whom the Agency, after a good faith effort, has been unable to contact. Persons adversely affected by this notice may request a hearing in accordance with the provisions of 40 CFR Part 164. An adversely affected person may avoid a hearing and maintain his registration in effect by supplying a correct and current address within the applicable 30 day period.

DATES: All registrations will be cancelled at the end of 30 days from the date of publication or receipt of this notice by registrants, unless the Agency is provided with a correct and current address of an affected registrant.

A request for a hearing by an affected registrant or the registrant's correct and current address must be received by the Agency on or before December 19, 1988, or 30 days after receipt by mail by the affected registrant of this notice, whichever is the later date.

A request for a hearing submitted by any other adversely affected persons must be received on or before December 19, 1988.

ADDRESS; Hearing requests must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Sherada Hobgood, Registration Support Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 724A, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7700).

SUPPLEMENTARY INFORMATION: Over the years, EPA has been unable to contact certain pesticide registrants at the addresses on file at the Agency or appearing on current pesticide product labels. EPA's inability to communicate with these registrants impairs the Agency's ability to discharge its statutory mandate to regulate pesticide products and their impact on the environment. Furthermore, it creates an undesirable situation because some registrants may unknowingly be in violation of the Act and escape burdens assumed by other registrants in compliance with the Act.

Section 6(b) of FIFRA allows the Administrator to issue a notice of intent to cancel a pesticide's registration if that "* * * pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act * * *."

Section 3(c)(1)(A) of FIFRA make it a condition of registration that a registrant's address be filed with the Agency and appear on the label of the registrant's pesticide product. 40 CFR 152.122 requires that a registrant must keep the Agency informed of his current name and address of record. If the Agency's good faith attempts to contact the registrant are not successful, the Agency will issue in the **Federal Register** a notice of intent to cancel all products of the registrant under FIFRA Sec. 6(b). The registrant must respond within 30 days requesting that the registration be maintained in effect, and providing his name and address of record. If no response is received, the cancellations will become effective at the end of the 30 days without further notice to the registrant.

Persons adversely affected by this notice may request a hearing in accordance with the provisions of 40 CFR Part 164. An adversely affected person may avoid a hearing and maintain his registration in effect by supplying a correct and current address within the applicable 30 day period.

The impact of these cancellations on the agricultural economy is difficult to determine. It is believed that some or all of the pesticide products subject to this cancellation action are no longer on the market. Some of the pesticide products have no agricultural uses. At worst, the impact on the agricultural economy is expected to be slight.

Pursuant to section 6(b), the Secretary of Agriculture has reviewed this notice and has no comments. The Science Advisory Panel has waived its right (under section 25(d)) to review this notice.

Registrations Subject to Cancellation

The following registrations are subject to cancellation under this notice.

Registrant: Bradford MFG Company
Address: 149 Rosedale, Jackson, TN 38301
Registration Nos.: 58-10

Registrant: Red Devil Corporation
Address: 1609 17 N 14th St., St. Louis, MO 63106
Registration Nos.: 111-1

Registrant: Trager MFG Company Inc.
Address: 1200 Wheeler Avenue, Scranton, PA 18510
Registration Nos.: 274-30-31-34

Registrant: Nash & Kinsella Laboratories
Address: 9216 Clayton Rd., St. Louis, MO 63124
Registration Nos.: 427-22-48

Registrant: State Chemical Company
Address: Box 310, Amarillo, TX 79105
Registration Nos.: 438-7-15-28-29-31-32-52-55-57-60-64 thru 67-69

Registrant: Amsco Division Union Oil Company of California
Address: 825 SE. Thornton, Minneapolis, MN 55414
Registration Nos.: 528-51

Registrant: Carbola Chemical Co. Inc.
Address: 1877 State St., Watertown, NY 13601
Registration Nos.: 607-38-39-43-44

Registrant: Syracuse Pharmacal Company Inc.
Address: C/O Leager Labs Inc., 4161 Beck Ave., St. Louis, MO 63116
Registration Nos.: 832-1

Registrant: Theodore Meyer Inc.
Address: 922 Callowhill St., Philadelphia, PA 19123
Registration Nos.: 854-6-10-12-16

Registrant: Chemical Service
Address: 11250 W. Addison St., Franklin Park, IL 60131
Registration Nos.: 900-6-24-27-51-52-63-67-74 thru 79, 86-92-93-95-97 thru 99, 101-102-104-105-107

Registrant: UDDO Products
Address: P.O. Box 29048, New Orleans, LA 70189
Registration Nos.: 1123-3-4-6

Registrant: Central Chemical Company Inc.
Address: 358 Walnut St., Memphis, TN 38102
Registration Nos.: 1140-2

Registrant: Industrial Sanitation Company
Address: P.O. Box 471, East Chicago, IN 46312
Registration Nos.: 1174-1

Registrant: Janitors Supply House Inc.
Address: 617-619 W. Pratt St., Baltimore, MD 21208
Registration Nos.: 1487-6-13

Registrant: Duraclean Company
Address: 839 Waukegan Road, Deerfield, IL 60015
Registration Nos.: 1550-4

Registrant: Rogers Insect Powder Company

Address: P.O. Box 6447, Mobile, AL 33606
Registration Nos.: 1591–1
Registrant: Trio Chemical Works Inc.
Address: 8321 Commonwealth Blvd., Bellerose, NY 11426
Registration Nos.: 1783–1 thru 3, 7 thru 9, 17–19–23–26–31–38–39–43–56–61–63–64–65–66–69–70–72–73–75
Registrant: Sanitary Products Company
Address: 5106 E. 27th St., Kansas City, MO 64127
Registration Nos.: 1795–3
Registrant: Pittsburgh Chemical Lab
Address: Century Bldg., Pittsburgh, PA 15222
Registration Nos.: 2037–5
Registrant: Nykon Chem. Corp.
Address: 15 Macquesten Pky S., Mt. Vernon, NY 10550
Registration Nos.: 2361–5
Registrant: Atlanta Chemical Company Inc.
Address: P.O. Box 237, Jamestown, NC 27282
Registration Nos.: 2443–1
Registrant: Michel & Pelton Co.
Address: 111 Broadway, Suite 206, New York, NY 10006
Registration Nos.: 2617–1–9–13–14–20–24–27–29–35–37–38
Registrant: MACO Laboratories
Address: 558 James Ave. SE., Grand Rapids, MI 49500
Registration Nos.: 2741–2
Registrant: Carter Insec & Chemical Company Inc.
Address: P.O. Box 127, Teachey, NC 28464
Registration Nos.: 2917–2–8–11–25–28–29–31–37–55–68–69
Registrant: The Bushnell Company
Address: 1760 Eleanor Ave., St. Paul, MN 55116
Registration Nos.: 2984–1 thru 3
Registrant: R.R. Brand, Inc.
Address: 638 Papworth Avenue, Metarie, LA 70005
Registration Nos.: 3336–1
Registrant: Consumers Oil Company
Address: P.O. Box 548, 2713 River Ave., Rosemead, CA 91771
Registration Nos.: 3528–2–4
Registrant: Arlenge Laboratories
Address: 175 Pearl St., Brooklyn, NY 11201
Registration Nos.: 3735–4–5–8–19–22–23–33
Registrant: Southern Agricultural Chemicals Inc.
Address: Rt. 1, Cades, SC 29518
Registration Nos.: 3743–153–182 thru 184, 188–189–192–220–254–255–262–263–275–280–281–287–292–299–321–322–323–326–330–331–335 thru 337
Registrant: Economy Products
Address: P.O. Box 427, Shenandoah, IA 51601
Registration Nos.: 3770–219
Registrant: Chevron Oil Company
Address: P.O. Box 1446, Louisville, KY 40201
Registration Nos.: 3775–1–2
Registrant: American Firestoline Corporation
Address: 825 Third Avenue, New York, NY 10022
Registration Nos.: 3840–5
Registrant: Clarke John & Company Inc.
Address: 420 Lexington Avenue, New York, NY 10017
Registration Nos.: 4085–2–3
Registrant: Noxal Products Company
Address: 633 C W Valencia Dr., Fullerton, CA 92632
Registration Nos.: 4162–1
Registrant: Eddington Laboratories Inc.
Address: P.O. Box 86, Cornwell Heights, PA 19020
Registration Nos.: 4302–2
Registrant: Zenith Chemical Corp.
Address: 175 Mt. Pleasant Ave., Newark, NJ 07104 Attn: Rose
Registration Nos.: 4328–11 thru 14, 20–23–26–27–30–33–36
Registrant: Falleck Chemical Corporation
Address: 460 Park Ave., New York, NY 10022
Registration Nos.: 4343–3
Registrant: Nock RJ
Address: New Orleans, LA 70140
Registration Nos.: 4489–2
Registrant: Clean Home Products
Address: 2805 Locust St., St. Louis, MO 63100
Registration Nos.: 4600–4–6–8–9
Registrant: Melvin E. Wyant
Address: Johnny Cake Ridge, Mentor, OH 44060
Registration Nos.: 4636–4
Registrant: Lustray Labs, Inc.
Address: 964 Franklin Ave., Brooklyn, NY 11225
Registration Nos.: 4646–1
Registrant: California Vet Supply Company
Address: 10621 Burbank Blvd., N. Hollywood, CA 91601
Registration Nos.: 4902–1
Registrant: Southeastern Chemical Corporation
Address: P.O. Box 1026, Orangeburg, SC 29115
Registration Nos.: 4977–107
Registrant: Conway Soap Products Company
Address: 255 W. 79th Street, Chicago, IL 60620
Registration Nos.: 5366–2–3–7
Registrant: Farmingdale Garden Labs
Address: 136 Verdi St., Farmingdale, NY 11735
Registration Nos.: 5605–176–190–191–1594
Registrant: Plant Marvel Labs
Address: 624 W. 119th St., Chicago, IL 60628
Registration Nos.: 5617–1–2
Registrant: Custom Laboratories Inc.
Address: Box 2132, Spokane, WA 99210
Registration Nos.: 5913–2
Registrant: De Corporation
Address: 940 Meadow Oaks Dr., Arlington, TX 76010
Registration Nos.: 6189–1
Registrant: Sanico
Address: 13143 Saticoy St., N. Hollywood, CA 91605
Registration Nos.: 6190–2 thru 4, –6–7–9–10–14–16–17–18–26–27
Registrant: RO DI Chemical Company Incorporation
Address: 1460 W. Montrose, Chicago, IL 60640
Registration Nos.: 6339–10–12
Registrant: Life O Fabric Chem. Company
Address: 2010 Balboa, Dallas, TX 75224
Registration Nos.: 6551–3–4
Registrant: Batesville Chemical Company
Address: 205 Pamela St., Batesville, MS 38606
Registration Nos.: 6607–4
Registrant: Central Exterminating & Chem Co.
Address: 365 Central Park Ave., Yonkers, NY 10704
Registration Nos.: 6614–3 thru 5
Registrant: Clover Products
Address: 146 University Ave., Rochester, NY 14605
Registration Nos.: 6646–4
Registrant: Griffin Chem. Company
Address: 1326 South Seventh Street, Louisville, KY 40208
Registration Nos.: 6799–6
Registrant: Dawson Chemical Company Inc.
Address: 1525 N. Post Oak Road, Houston, TX 77055
Registration Nos.: 6874–2–5–6
Registrant: Dill J J Company
Address: Box 788, Kalamazoo, MI 49005
Registration Nos.: 6900–1–2–4 thru 6,–8–9–12–16–18–25–26–29–36 thru 39, 42–43–46–53 thru 55, 58–59–65–75–82–84–85–88–94–103–107–109–110–113–120 thru 122, –130–132 thru 134, –136–148
Registrant: Naftone Inc.
Address: 425 Park Ave., New York, NY 10022
Registration Nos.: 6948–10
Registrant: National Allied Products Co.
Address: P.O. Box 7348, Omaha, NE 68107
Registration Nos.: 6971–1–9

Registrant: Laurence & CO E F
Address: 42 Whitney St., Northboro, MA 01532
Registration Nos.: 7184–1
Registrant: Bangels Herold Company Inc.
Address: Key Hwy & Boyle St., Baltimore, MD 21230
Registration Nos.: 7263–1
Registrant: Intree Corporation
Address: 1212 Washington, Muscatine, IA 52761
Registration Nos.: 7452–1
Registrant: Kem Labs Incorporated
Address: 1 Graham Lane, Lodi, NJ 07644
Registration Nos.: 7506–112
Registrant: Modern Pool Products Inc.
Address: 177 Greenwich Ave., Stamford, CT 06902
Registration Nos.: 7531–2–3–5–7–9
Registrant: New System Ext. Inc.
Address: Box 8422, Santurce, PR 00910
Registration Nos.: 7612–1
Registrant: Marval Chem. Company
Address: 929 Broadway, Lorain, OH 44052
Registration Nos.: 7614–2
Registrant: Chem-O-Craft Specialties
Address: Box 208, Argo, IL 60501
Registration Nos.: 7818–1
Registrant: Calahan Inc. H A
Address: 138 Water St., Box 448, S Norwalk, CT 06856
Registration Nos.: 7854–1–2
Registrant: Eagle Exterm. Serv.
Address: 1007 N 46th St., Philadelphia, PA 19100
Registration Nos.: 7978–2
Registrant: SCP Company
Address: 12 Quincy St., Nashua, NH 03104
Registration Nos.: 8055–1
Registrant: Laboratory Essentials Inc.
Address: P.O. Box 91, W. Islip, NY 11795
Registration Nos.: 8109–1–6
Registrant: Aero-Dyne Manufacturing Corporation
Address: 3505 W. Main, Emmetsburg, IA 50536
Registration Nos.: 8111–3–5
Registrant: Aggie Chemical Industry
Address: P.O. 8335, San Antonio, TX 78208
Registration Nos.: 8127–22
Registrant: Scott Laboratory
Address: 1595 Tarrytown St., San Mateo, CA 04402
Registration Nos.: 8128–1
Registrant: Reliance Chem. Corp.
Address: 120 11th St., Charlottesville, VA 22903
Registration Nos.: 8245–2
Registrant: T C Products Company
Address: P.O. Box 2132, Madison, WI 53705
Registration Nos.: 8487–7 thru 11
Registrant: Pro-Specialties, Inc.
Address: 7754 W. Harwood Avenue, Wauwatosa, WI 53213
Registration Nos.: 8550–1–4–6 thru 23,–28–32
Registrant: Zevel Corp.
Address: P.O. Box 112, La Mirada, CA 90637
Registration Nos.: 8684–2
Registrant: Wallace Chem. Company
Address: 24600 S. Main St., Carson, CA 90749
Registration Nos.: 8703–1–3 thru 5
Registrant: Montrose Chem. Corp. of CA
Address: P.O. Box E. 2401 Morris Ave., Union, NJ 07083
Registration Nos.: 8775–2 thru 4
Registrant: Clover Farm Stores Corp.
Address: 2135 Columbus Road, Cleveland, OH 44113
Registration Nos.: 8813–4
Registrant: Syrodeltro Chem. Inc.
Address: 501 W. Fayette St., Syracuse, NY 13204
Registration Nos.: 8931–3
Registrant: The Broadway Supply Company
Address: 7525 Bessemer Ave., Cleveland, OH 44127
Registration Nos.: 8955–8
Registrant: Brown Incorporated E L
Address: 267 E. Valley Blvd., Rialto, CA 92376
Registration Nos.: 9093–2
Registrant: Moraine Ind. Inc.
Address: 1212 W. Second St., Oconomowoc, WI 53066
Registration Nos.: 9239–5
Registrant: Duke Laboratories
Address: 10801 Linn Station Road, Louisville, KY 40223
Registration Nos.: 9294–1
Registrant: Industrial Chemical & Supply Company
Address: Box 4706, Tampa, FL 33607
Registration Nos.: 9356–1 thru 3
Registrant: World Wide Labs Inc.
Address: P.O. Box 22144, Tampa, Fl 33622
Registration Nos.: 9372–5–6–10
Registrant: Atlas Paint & Varnish Company
Address: 32–50 Buffington Ave., Irvington, NJ 07111
Registration Nos.: 9430–2
Registrant: Dri-Cide Inc.
Address: 6608 San Fernando Road, Glendale, CA 91201
Registration Nos.: 9435–1
Registrant: Elgene Chemicals Inc.
Address: 327 Northrup Ave., Mamaroneck, NY 10543
Registration Nos.: 9494–1 thru 4
Registrant: Belleren Research Corp.
Address: 354 Main St., Saugerties, NY 12477
Registration Nos.: 9575–2
Registrant: Douglas Chemical Division
Address: Deico Inc., 1 Lexington Ave., Beth Page, NY 10714
Registration Nos.: 9587–4
Registrant: MacNair L E
Address: 15 Franklin St., Houlton, ME 04730
Registration Nos.: 9592–3
Registrant: Bio. Scientific Company
Address: Box 1155, Rancho Santa Fe, CA 92067
Registration Nos.: 9611–1 thru 3
Registrant: Smith William Armstrong Company
Address: Box 868, East Point, GA 30044
Registration Nos.: 9624–2–4–5
Registrant: Glenn LW Termite & Pest Control
Address: 3305 24th St., W. Bradenton, FL 33505
Registration Nos.: 9625–1
Registrant: Ramrod Chemicals
Address: P.O. Box 2640, Dallas, TX 75221
Registration Nos.: 9681–5 thru 7
Registrant: Arsan Research Inc.
Address: 8715 Hidden Lake Dr., Howell, MI 48843
Registration Nos.: 9682–1
Registrant: All American Swimming Pool Manufacturing Company
Address: 8606 Blue Ash Rd., Cincinnati, OH 45242
Registration Nos.: 9705–1
Registrant: Veterinary Division
Address: Pharmaceutical Research Corp., North Miami, FL 33161
Registration Nos.: 9734–4
Registrant: Sanitation Services
Address: 194 Sterling Ave., Yonkers, NY 10704
Registration Nos.: 9761–1
Registrant: Keystone Veterinary Supply Company
Address: 8508 Widener Road, Philadelphia, PA 19118
Registration Nos.: 9766–1–2
Registrant: W–B Chemical Company Inc.
Address: 15 Macquesten Pkwy S., Mount Vernon, NY 10550
Registration Nos.: 9771–1
Registrant: Kendall Company Textile Division
Address: Box 1828, Charlotte, NC 28201
Registration Nos.: 9776–1
Registrant: Carman Conley Inc.
Address: 4321 W. 32nd St., Chicago, IL 60623
Registration Nos.: 9834–1
Registrant: International Raticide Company

Address: 617 Willow Glen Road, Santa Barbara, CA 93105
Registration Nos.: 9940–1
Registrant: Joseph E R Company Inc.
Address: P.O. Box 189, Norristown, PA 19404
Registration Nos.: 10044–1
Registrant: Ortho Industries Inc.
Address: 49 Lawton St., New Rochelle, NY 10801
Registration Nos.: 10046–1
Registrant: Valley Mills
Address: Box 1099, Vicksburg, MS 39180
Registration Nos.: 10181–1
Registrant: Community Pest Control
Address: 3219 N. 30th St., Omaha, NE 68111
Registration Nos.: 10281–1
Registrant: Rodoon Company
Address: 1668 E. Sunshine, Springfield, MO 65804
Registration Nos.: 10288–1
Registrant: Professional Chemical Company Inc.
Address: P.O. Box 94071, 4517 Yale St., Houston, TX 77018
Registration Nos.: 10290–12–17
Registrant: The Desachem Company, Inc.
Address: 29 Riverside Ave., Bldg. No. 17, Newark, NJ 07104
Registration Nos.: 10321–1–2
Registrant: Multa Chem. Inc.
Address: 11026 Endicott, Houston, TX 77035
Registration Nos.: 10439–1
Registrant: Mor-Par Company
Address: 7019 Coleshire Dr., Dallas, TX 75232
Registration Nos.: 10489–1
Registrant: Vamco Products Inc.
Address: 438 Springfield Pike, Cincinnati, OH 45317
Registration Nos.: 10545–1
Registrant: Extermin-All
Address: 4226 Ebbtide, Houston, TX 77045
Registration Nos.: 10548–2
Registrant: Rheyan-National
Address: 2828 Stonebrook St., Irving, Tx 75060
Registration Nos.: 10627–1
Registrant: Ecology Products Corp.
Address: P.O. Box 3349, Brownsville, TX 78520
Registration Nos.: 10636–2
Registrant: L & M Mineral Company
Address: P.O. Box 756, Brownwood, TX 76801
Registration Nos.: 10640–1
Registrant: W & B Div. of W W B Co.
Address: 21732 Kaneohe Lane, Huntington Beach, CA 92646
Registration Nos.: 10658–1
Registrant: Morehead Ind Inc.
Address: 273 Hayden Rowe, Hopkinton, MA 01748
Registration Nos.: 10692–4–5
Registrant: Lawn-A-Mat Chem & Equip Corp.
Address: 54 Kinkel St., Westbury, NY 11590
Registration Nos.: 10711–4–6
Registrant: Prinova Co., Inc.
Address: 982 Terminal Way, San Carlos, CA 94070
Registration Nos.: 10742–3 thru 9, 10–16–17
Registrant: Engineering
Address: Box 2497, Inverness, FL 32651
Registration Nos.:
Registrant: Rush-Hampton Ind.
Address: 3000 Industrial Park, Longwood, FL 32750
Registration Nos.: 10824–5
Registrant: Antical Chemical Inc.
Address: 770 Exchange St., Rochester, NY 14608
Registration Nos.: 10833–2–4
Registrant: Unichem Corp.
Address: 7 Regal Dr., Huntington, NY 11743
Registration Nos.: 10859–1
Registrant: March Chem Company Inc.
Address: 1464 Sierra Vista Dr., Baton Rouge, LA 70815
Registration Nos.: 10880–1–3–4
Registrant: Houston Tack Room Products Inc.
Address: 2817 West, T.C. Jester, Houston, TX 77018
Registration Nos.: 11294–1
Registrant: Three O One Exterminating Service Company
Address: 211 Lillian Rd., Wilson, NC 27893
Registration Nos.: 11322–3 thru 5
Registrant: Patel Inc.
Address: 205Westport Road, Kansas City, Mo 64111
Registration Nos.: 11331–1
Registrant: Advance Pakaging Inc.
Address: 6410 Mayfair, Houston, TX 77017
Registration Nos.: 11454–2
Registrant: Care-Free Swimming Pool Supply Company
Address: 4170 Grand Ave., Gurnee, IL 60031
Registration Nos.: 11481–2
Registrant: Shalco Chemical Corporation
Address: 1125 Brown Ave., P.O. Box 3443, Toledo, OH 43607
Registration Nos.: 11511–5–6–19–23
Registrant: Armstrong Chemical Company
Address: P.O. Box 669, Hugo, OK 74743
Registration Nos.: 11528–1–2
Registrant: Filters International Inc.
Address: Box 33, Lake Zurich, IL 60047
Registration Nos.: 11601–2–3
Registrant: Index Chemical Inc.
Address: Rd #3, Carranza Rd., Vincentown, NJ 08088
Registration Nos.: 11672–2
Registrant: Perma Kill Mfg. Co.
Address: P.O. Box 665, Sallisaw, OK 74955
Registration Nos.: 11704–2
Registrant: Cain Chemical Company
Address: 1204 Heights, Pasadena, TX 77503
Registration Nos.: 11716–4
Registrant: Plas Chem Corp.
Address: 6300 Bartmer Industrial Drive, St. Louis, MO 63130
Registration Nos.: 11717–1
Registrant: Cobis Products Company Inc.
Address: P.O. Box 4358, Atlanta, GA 30302
Registration Nos.: 11737–1
Registrant: Salem Laboratories
Address: 8325 Chubb Rd., North Vale, MI 48167
Registration Nos.: 12010–1 thru 5
Registrant: Robinette, Inc.
Address: 975 Lake Rd., Media, OH 44256
Registration Nos.: 12015–1–2–14–15–16
Registrant: Colony Corporation of America
Address: 1399 East 98th Street, Chicago, IL 60628
Registration Nos.: 12146–1
Registrant: Corbin Chemical Corp.
Address: 1400–04 Coney Island Ave., Brooklyn, NY 11230
Registration Nos.: 12325–2–3
Registrant: Kleenco Products
Address: 13233 NE., 16th Street, Bellevue, WA 98005
Registration Nos.: 12388–1 thru 5
Registrant: Springbok Chemical Company Inc.
Address: P.O. Box 398, Pendleton, OR 97801
Registration Nos.: 12434–3
Registrant: Aqua Power Inc.
Address: 2973 Riverland Rd., Fort Lauderdale, FL 33312
Registration Nos.: 12467–1–2
Registrant: Dixie Compound Works
Address: 434 Aberdeen Avenue, Dayton OH 45419
Registration Nos.: 12475–1
Registrant: Parks Enterprises Inc ME
Address: P.O. Box 966, Temecula, CA 92390
Registration Nos.: 13765–1 thru 3
Registrant: Dianol Inc.
Address: P.O. Box 10636, St. Petersburg, FL 33733
Registration Nos.: 13794–2
Registrant: Wayne County Pest Control Inc
Address: 18269 Wyoming Ave., Detroit, MI 48221

Registration Nos.: 13811–2
Registrant: Form-A-Chem, Inc.
Address: 2505 Metro Blvd., Maryland Heights, MO 63043
Registration Nos.: 13881–3 thru 5
Registrant: Acrocem Inc.
Address: Box 388, Livingston, TX 77351
Registration Nos.: 13892–1
Registrant: Clear Pool Maintenance Inc.
Address: Box 9586, Riviera Beach, FL 33404
Registration Nos.: 14639–1
Registrant: Chem Con
Address: 1126 McGavock, Nashville, TN 37217
Registration Nos.: 14648–3–5
Registrant: Dyna Chem Corporation
Address: 56 Lincoln Hwy., Penndel, PA 19047
Registration Nos.: 14799–3
Registrant: The McKerson Corp
Address: 1500 South 5th Street, Minneapolis, MN 55408
Registration Nos.: 14895–1
Registrant: Corporated Brands Sales Inc.
Address: P.O. Box 42653, Evergreen Park, IL 60642
Registration Nos.: 14943–5
Registrant: Mother's Root Destroyer
Address: P.O. Box 47622, Dallax, TX 75247
Registration Nos.: 15015–1
Registrant: Key Chem Products Inc.
Address: 433 Government St., Baton Rouge, LA 70802
Registration Nos.: 15442–1–2
Registrant: Southland Agricultural Chemical Company
Address: P.O. Box 6207, Montgomery, AL 36106
Registration Nos.: 15575–11–17
Registrant: Davis Supply Company
Address: 2134 S. Saginaw, Flint, MI 48503
Registration Nos.: 16151–1
Registrant: Midich Prod Sales Company
Address: 3940 Dereimer Ave., Bronx, NY 10466
Registration Nos.: 18187–1
Registrant: Nationwide Chemical Corp.
Address: 146 Midland Avenue, Kearny, NJ 07032
Registration Nos.: 18684–2
Registrant: Emac Corporation
Address: 1187 Milldale Rd., Cheshire, CT 06410
Registration Nos.: 19223–1–2
Registrant: National Cosmetic Labs Inc.
Address: 7712 Densmore Ave., Van Nuys, CA 91406
Registration Nos.: 19762–1–2
Registrant: Old Hickory Medicine Co. Inc.
Address: P.O. Box 33, 5813 Lee Highway, Chattanooga, TN 37421
Registration Nos.: 21337–2
Registrant: C & H Chemical Company
Address: 475 N. Cleveland Ave., St. Paul, MN 55107
Registration Nos.: 21737–1–2
Registrant: Lucas Products Company
Address: State and Jackson Sts, Bedford, IA 50833
Registration Nos.: 23562–1
Registrant: Interstate Paint Corporation
Address: P.O. Box 1038, Brunswick, GA 31520
Registration Nos.: 24739–1
Registrant: Amform Company
Address: 4952 Sequoi Rd., Memphis, TN 38117
Registration Nos.: 25877–1
Registrant: McKenzie & Rogers
Address: Seattle, WA 98111
Registration Nos.: 26153–1
Registrant: Copper State Chemical Company
Address: Box 1110, Tucson, AZ 85702
Registration Nos.: 26494–1
Registrant: Preferred Products Company
Address: 620 Ave. O, Winter Haven, FL 33880
Registration Nos.: 26876–1
Registrant: Colt Chemical Corporation
Address: 2212 Hawkins Street, Charlotte, NC 28203
Registration Nos.: 27036–1–4–5
Registrant: Ani-Sheid Inc.
Address: 5401 Pamela Drive, Louisville, KY 40219
Registration Nos.: 30320–1
Registrant: Woods Paul Company Inc.
Address: 21 Highland Ave, Needham, MA 02192
Registration Nos.: 30600–2
Registrant: Bionomical Chemicals & Services Inc.
Address: 1003 Pineville Rd., Chattanooga, TN 37405
Registration Nos.: 30948–4–6–8 thru 12, 29–32–33–34
Registrant: Oil Chem International
Address: PO Box 627, Gonzales, LA 70737
Registration Nos.: 30955–4
Registrant: Graham Service Corp.
Address: 401 N.E. 62nd St., Miami, FL 33138
Registration Nos.: 31183–1
Registrant: VO-Toys Inc.
Address: Bronx, NY 10451
Registration Nos.: 31445–2–5–6–9
Registrant: Sunshine Products Company
Address: 2310 SO. 27th St., Milwaukee, WI 53218
Registration Nos.: 31867–1
Registrant: Swimming Pool Doctor
Address: 1322 N. Mill Street, Orlando, FL 32803
Registration Nos.: 32043–1
Registrant: ABR Enterprises
Address: 7812 Chestnut Way, Pleasanton, CA 94566
Registration Nos.: 32172–1
Registrant: Water Science Inc.
Address: 6267 North Blackstone Ave., Fresno, CA 93710
Registration Nos.: 32799–1
Registrant: Commander Chemical & Supply Co. Inc.
Address: 443 South Central Ave., Phoenix, AZ 85004
Registration Nos.: 33016–2
Registrant: Chemik Labs Inc.
Address: P.O. Box 24884, 1608 Day Star Drive, Dallas TX 75224
Registration Nos.: 33428–1
Registrant: Hawthrone Chemical Co.
Address: P.O. Box 11555, St. Louis, MO 63105
Registration Nos.: 33442–813
Registrant: Power Clean Products Inc.
Address: 200 Sherwood Drive, Wood Dale, IL 60191
Registration Nos.: 33494–1
Registrant: Agri Future Company
Address: 15708 Loop Road, Burnsville, MN 55337
Registration Nos.: 33861–1
Registrant: S & S Pools & Hockey
Address: 1176 Union Road, West Seneca, NY 14224
Registration Nos.: 34088–1
Registrant: Ecological & Specialty Prod. Co.
Address: 1188 Tice Place, Westfield, NJ 07090
Registration Nos.: 34538–1
Registrant: Supreme Chemicals Inc.
Address: 989 Montague Expressway, Milpitas, CA 95035
Registration Nos.: 34632–1
Registrant: Foresight of Omaha, Inc.
Address: 2900 F. St., Omaha, NE 68111
Registration Nos.: 34722–1
Registrant: Puff Industries
Address: Brooklyn, NY 11223
Registration Nos.: 34737–1
Registrant: Bio-Dyne Industries
Address: 24201 Frampton Avenue, Harbor City, CA 90710
Registration Nos.: 34850–3
Registrant: 50th State Cockroach Killer
Address: P.O. Box 8006, Honolulu, HI 96815
Registration Nos.: 34853–1
Registrant: Roberts Proprietories Inc.
Address: 575 Madison Avenue, New York, NY 10022
Registration Nos.: 34882–2–3

Registrant: MG Scientific Gas
Address: Div of Burdett Oxygen, One Schuklkill Ave, Norristown, PA 19404
Registration Nos.: 35084–1

Registrant: Winco Chemical Company
Address: P.O. Box 10692, Jackson, MS 39209
Registration Nos.: 35138–2–3–5–9, 11 thru 24, 26–29–30–31–33–34, 36 thru 42, 45–46–48–51–52–53–56–59

Registrant: Leisure Aid
Address: P.O. Box 7348, Omaha, NE 68107
Registration Nos.: 35284–1–2

Registrant: Gable-Tite Products Co., Inc.
Address: 3790 NW., 7 Box 470096, Miami, FL 33147
Registration Nos.: 35302–2

Registrant: International Trade Service Inc.
Address: 337 High St., Burlington, NJ 08016
Registration Nos.: 35314–1

Registrant: Arizona Sulphur Company
Address: 5340 West Bethany Home Road, Box 863, Glendale, AZ 85311
Registration Nos.: 35377–1–2

Registrant: E Z Bleach Corporation
Address: 2 Washburn Street, New Bedford, MA 02742
Registration Nos.: 35483–20002

Registrant: The America Company
Address: P.O. Box 846, Milton, FL 32570
Registration Nos.: 35904–1

Registrant: Water Equipment Manufacturers, Inc.
Address: 701 W. Tropical Way, Broward City.-Plantation, FL 33312
Registration Nos.: 35920–1

Registrant: Irwin Associates, Inc.
Address: P.O. Box 20636, St. Petersburg, FL 33742
Registration Nos.: 35959–4–5

Registrant: Aerosol West
Address: 2595 Katherine Ave., Ventura, CA 93001
Registration Nos.: 35988–1

Registrant: Crown Chemical Company
Address: 5280 Merrick Road, Massapequa, L.I., NY 11758
Registration Nos.: 36534–1 thru 3

Registrant: Bay Chemical Company
Address: 571 Airport Rd., 3 No., Naples, FL 33940
Registration Nos.: 36829–1

Registrant: Union Pool Marts, Inc.
Address: 2154 Eureka Rd., Wyandotte, MI 48192
Registration Nos.: 36919–2

Registrant: Hudson's Pest Control Products
Address: 1754 Meldrum Street, Detroit, MI 48207
Registration Nos.: 37103–1

Registrant: Transbas
Address: 1525 Lockwood Road, Billings, MT 59101
Registration Nos.: 37507–1

Registrant: OMTAR Chemicals Ltd
Address: 555 13th Street, NW., Washington, DC 20004
Registration Nos.: 37585–1

Registrant: Harrell Swimming Pool Service
Address: 597 W. Hickpochee Ave., La Belle, FL 33935
Registration Nos.: 37656–1–3

Registrant: Waters Chemicals
Address: 729 Beach Place, Mundelein, IL 60060
Registration Nos.: 37753–1

Registrant: Aqua Clear Pools Inc.
Address: 13377 W. Dixie Hwy, N. Miami, FL 33161
Registration Nos.: 37791–1

Registrant: Preferred Pool Services
Address: 201 SE 2nd Avenue, Delray Beach, FL 33444
Registration Nos.: 37898–1

Registrant: Ed. Carter Swimming Pool Serv.
Address: 1544 NE., 109th St., Miami, FL 33161
Registration Nos.: 37924–1

Registrant: International Water Systems
Address: P.O. Box 3371, St. Augustine, FL 32084
Registration Nos.: 38055–1–2

Registrant: Pace Limited
Address: P.O. Box 48, Taylor, TX 76574
Registration Nos.: 38174–1–2–4–7–8

Registrant: Perfect Pools of Fla. Inc., D/B/A Perfect Pools
Address: 1617 Middle River Dr., Ft. Lauderdale, FL 33305
Registration Nos.: 38221–3

Registrant: Ultra White Manufacturing Co.
Address: 329 Northrup Ave., Mamaroneck, NY 10543
Registration Nos.: 38346–1

Registrant: Sigma Chemical Corporation
Address: 1957 Temple, Signal Hill, CA 90804
Registration Nos.: 38682–2

Registrant: Michael G. Segina
Address: 1637 North Roosevelt Ave., Pasadena, CA 91104
Registration Nos.: 38758–1

Registrant: Uni-Lab Corporation
Address: 177 N. Church St., Suite 310, Box 5706, Tucson, AZ 85701
Registration Nos.: 38887–1–2

Registrant: Coventry Products
Address: 975 Lake Road, Medina, OH 44256
Registration Nos.: 38918–1 thru 3

Registrant: Holiday Industries
Address: 523 E. Rock Island, Grand Prairie, TX 75050
Registration Nos.: 39034–2

Registrant: Aquabiotics Corporation
Address: 701 Checker Drive, Buffalo Grove, IL 60090
Registration Nos.: 39096–1 thru 3

Registrant: Mundobello Chemical Services Co.
Address: 3907 Capitol, Houston, TX 77023
Registration Nos.: 39222–1

Registrant: Aqua Treat Chemicals, Inc.
Address: 1166 87th Street, Daly City, CA 94015
Registration Nos.: 39327–17–18

Registrant: Filtercold Corporation
Address: 2810 S. 24th Street, Phoenix, AZ 85034
Registration Nos.: 39446–3–4

Registrant: Pool Doctors
Address: 1400 Ellis St., Waukesha, WI 53186
Registration Nos.: 39662–2

Registrant: Supreme Distributors, Inc.
Address: 1509 E. Washington, Phoenix, AZ 85034
Registration Nos.: 39839–2

Registrant: Kratz Laboratories
Address: 1488 Page Industrial Court South, St. Louis, MO 63132
Registration Nos.: 39841–1–3 thru 11

Registrant: Chem-Ware Industrial Products, Inc.
Address: 7597 NW., 73rd Terrace, Tamarac, FL 33319
Registration Nos.: 39910–1 thru 12

Registrant: Alpha Pool & Marcite Co.
Address: Box 490252, Ft. Lauderdale, FL 33313
Registration Nos.: 39915–1

Registrant: Leading Trade Co.
Address: Box 476, Forest Hills, NY 11375
Registration Nos.: 40023–1

Registrant: Atlantic Pool Service, Inc.
Address: 3007 N. State Rd., #7, Hollywood, FL 33021
Registration Nos.: 40075–2

Registrant: Outdoor World Distributors, Inc.
Address: 329 SW. 14th Ave., Pompano Beach, FL 33060
Registration Nos.: 40080–2

Registrant: Leslies Swimming Pool Supplies
Address: 750 East McNab Rd., Pompano Beach, FL 33060
Registration Nos.: 40209–1

Registrant: Chemtex International, Ltd.
Address: P.O. Box 336, Prairieville, LA 70769
Registration Nos.: 40275–6 thru 27

Registrant: Equine Chemical Co., Inc.
Address: 529 North 43rd West Ave., Tulsa, OK 74127
Registration Nos.: 40322–1

Registrant: Admiral Pool Service

Address: 405 South Ridge Rd., Delray Beach, CA 33444
Registration Nos.: 40352–2
Registrant: Century Manufacturing Co.
Address: 40 N. Jefferson St., P.O. Box 544, New Castle, PA 16103
Registration Nos.: 40382–1
Registrant: Allfield Chemicals, Inc.
Address: PO Drawer AA, Lafayette, LA 70502
Registration Nos.: 40956–1 thru 10
Registrant: Chemical Solvent Co.
Address: P.O. Box 487, Birmingham, AL 35201
Registration Nos.: 40959–1 thru 10
Registrant: Aqua-Tek Corp.
Address: 3256 "F" St., San Diego, CA 92102
Registration Nos.: 41041–1–2
Registrant: Pro Kem
Address: 1015 Wall Rd., El Paso, TX 79915
Registration Nos.: 41067–1
Registrant: International Chemicals Group
Address: 5800 Fairfield Ave., Box 6354, Ft. Wayne, IN 46815
Registration Nos.: 41167–1
Registrant: Mitchell Gunite Co.
Address: Box 8927, Jacksonville, FL 32211
Registration Nos.: 41227–1
Registrant: Dolphin Pool Service Division of Porpoise Pools
Address: 18789 SW. 105th Pl., Miami, FL 33157
Registration Nos.: 41379–1
Registrant: Mister Chemicals
Address: 160 NW. 24th Street, Boca Raton, FL 33432
Registration Nos.: 41380–1
Registrant: RPS Products Inc.
Address: Box 243–4, N. Elmhurst Rd., Prospect Heights, IL 60070
Registration Nos.: 41550–1
Registrant: Atlantis Pool Service & Supply
Address: Box 928, New Smyrna Beach, FL 32069
Registration Nos.: 41617–2
Registrant: Colony Pool Service Inc.
Address: 3520 Philadelphia Pike, Claymont, DE 19703
Registration Nos.: 41846–1
Registrant: S. E. Abbott Maintenance & Repair
Address: 6068 Chevy Chase St., West Palm Beach, FL 33406
Registration Nos.: 41959–1
Registrant: Crystal Clear Pools
Address: P.O. Box 14417, North Palm Beach, FL 33408
Registration Nos.: 41966–1
Registrant: Pool Plaza Inc.
Address: 20 Stone Road, Rochester, NY 14616
Registration Nos.: 51972–1
Registrant: Ark Swimming Pool Service Inc.
Address: 1220 NW. 23rd Ave., Fort Lauderdale, FL 33311
Registration Nos.: 42006–1
Registrant: Industrial Systems
Address: Long Plain Road, Matapoisett, MA 02739
Registration Nos.: 42087–110
Registrant: Deta Pools Inc.,
Address: 19 Jefferson Ave., Fairport, NY 14450
Registration Nos.: 42108–1
Registrant: Sure Chemical Corp.
Address: Route 140, Box 140, Upton, MA 01568
Registration Nos.: 42263–2–3
Registrant: Sentinel Chemical Inc.
Address: 545 Periwinkle Dr., Roswell, GA 30075
Registration Nos.: 42268–2–3
Registrant: Fast Supply
Address: 455 10th St., San Francisco, CA 94103
Registration Nos.: 42296–1
Registrant: Allegheny Water Services Corp.
Address: 2770 DS Harbor Blvd., Santa Ana, CA 92704
Registration Nos.: 42322–1–2–4–5
Registrant: Chemical Specifics, Inc.
Address: 420 Centre St., Nutley, NJ 07110
Registration Nos.: 42437–1 thru 5
Registrant: Big A Pool Service
Address: 533 N.E., 11th Ave., Ft. Lauderdale, FL 33301
Registration Nos.: 42468–1
Registrant: Washine Div.
Address: 935 Allwood Road, Clinton, NJ 07012
Registration Nos.: 42537–1
Registrant: Environmental Safe Products Corp.
Address: 20460 Gramercy Pl., Torrance, CA 90501
Registration Nos.: 42565–1
Registrant: Tasha Enterprises
Address: Box 1232, Chickasha, OK 73018
Registration Nos.: 42694–1
Registrant: S & R Plumbing Corp.
Address: 1075 NE. 79th St., Miami, FL 33138
Registration Nos.: 42763–1
Registrant: Custom Chemical Engineering
Address: 59 Meander Pike, Chatham, IL 62629
Registration Nos.: 42842–3–4
Registrant: Masti-Kure Products Co. Inc.
Address: One Wisconsin Ave., Norwich, CT 06360
Registration Nos.: 42844–1
Registrant: Mason Chemical Co.
Address: 6135 Shirley St., Naples, FL 33942
Registration Nos.: 42959–1
Registrant: Progressive Hydrology
Address: Box 584, Lawson, MO 64062
Registration Nos.: 43018–1–2
Registrant: Pool World Inc.
Address: 15326 North Nebraska, Tampa, FL 33612
Registration Nos.: 43141–1
Registrant: Pride Chemical
Address: Box 5001 Sus, Fargo, ND 58105
Registration Nos.: 43321–1
Registrant: Dr. Gerald G. McCarthy
Address: Rural Route, Bridgewater, IA 50837
Registration Nos.: 43357–1
Registrant: Texchem, Inc.
Address: 112 Catalina Drive, Greenville, SC 29609
Registration Nos.: 43508–1 thru 4
Registrant: CPI Chemicals, Inc.
Address: 2800 North Loop West, Suite 314, Houston, TX 77092
Registration Nos.: 43592–1
Registrant: Airwick Pool Products, Inc.
Address: 4 Cermak Boulevard, St. Peters, MO 63376
Registration Nos.: 43603–1
Registrant: Nu-Coat Chemicals
Address: Route, One, Four Oaks, NC 27524
Registration Nos.: 43694–1
Registrant: Eagle Laboratories
Address: 1802 West Grant Rd, Tucson, AZ 85705
Registration Nos.: 43717–27
Registrant: Greenshield of Washington
Address: Box 25784, Seattle, WA 98125
Registration Nos.: 43740–1
Registrant: Marco Pool Care, Inc.
Address: P.O. Box 784, Marco Island, FL 33937
Registration Nos.: 43753–1–2
Registrant: Bayside Industries, Inc.
Address: 109 Millers Lane Box 1927, Harrisburg, PA 17105
Registration Nos.: 43783–3
Registrant: Total Cost Systems
Address: 5186 126th Ave. N., Clearwater, FL 33520
Registration Nos.: 43872–1
Registrant: Stewart Sanitary Supply Co., Ltd.
Address: P.O. Box 15061 St. Louis, MO 63110
Registration Nos.: 43954–1–2–4–5–7–9–11–13–14–17–18–19–20–21–25–26–31–32–33–35–36–38–41–42–43–44–45–46–47–50–52–55–58–60
Registrant: G. Tex Chemical Internat'l
Address: 7900 Westheimer, No. 340, Houston, TX 77062
Registration Nos.: 43982–1
Registrant: Espar Chemical Corp.
Address: 1233 South Circle, Forest Park, IL 60130

Registration Nos.: 43985–1
Registrant: Manufactured Products, Inc.
Address: 317 11th St., Beach Haven, NJ 08008
Registration Nos.: 43988–1
Registrant: Riverblue Pools Contractor, Inc.
Address: 10527 S.W. 40th St., Miami, FL 33165
Registration Nos.: 44174–1
Registrant: Marzone, Inc.
Address: P.O. Box 1949, Tifton, GA 31794
Registration Nos.: 44317–1 thru 5–8–11 thru 16–18–19–21 thru 26–30–32 thru 36–38 thru 44–46
Registrant: Atlantic Pool Of Palm Beach, Inc.
Address: 2708 N. Federal Hwy., Delray Beach, FL 33444
Registration Nos.: 44371–1
Registrant: Pleasure Makers
Address: 381 S. Tamiami Drive, N.W., Charlotte, FL 33952
Registration Nos.: 44388–1
Registrant: California Cleaning Products, Inc.
Address: 8763 Lankershim Blvd., Sun Valley, CA 91352
Registration Nos.: 44389–1–4
Registrant: Votex Pool Service
Address: 1467 N.E. 57th Place, FT. Lauderdale, FL 33334
Registration Nos.: 44410–1
Registrant: Doyle Services, Inc.
Address: P.O. Box 8211, Indian River Shores, FL 32960
Registration Nos.: 44418–1
Registrant: Pet Rx
Address: 8801 N. Crescent Drive, Miramar, FL 33025
Registration Nos.: 44455–2
Registrant: Chou Chen Chemicals, Inc.
Address: 901 South 15th St., Louisville, KY 40210
Registration Nos.: 44639–1
Registrant: CMC, Inc.
Address: 327 Locust St., New Castle, PA 16103
Registration Nos.: 44648–1
Registrant: P.S. Products Co.
Address: 1968 Cummings Dr., Los Angeles, CA 90027
Registration Nos.: 44661–1
Registrant: Simadon
Address: Box 511, San Pedro, CA 90733
Registration Nos.: 44848–1
Registrant: Color Your Yard Inc.
Address: 515 Lee Road, Rochester, NY 14606
Registration Nos.: 44873–1
Registrant: Custom Pools & Spas
Address: 2092 17th St., Sarasota, FL 33580
Registration Nos.: 44898–1
Registrant: P & S Laboratories
Address: Box 55271, Riverside, CA 92517
Registration Nos.: 44971–1
Registrant: Omni Products
Address: 3049 Rigel Ave., Las Vegas, NV 89102
Registration Nos.: 45037–1
Registrant: Pool Boy Inc.
Address: 1207 W. Broward Blvd., Ft. Lauderdale, FL 33311
Registration Nos.: 45051–1
Registrant: Stanley Hartman Manufacturing, Inc.
Address: 4351 South Country Club Rd., Tucson, AZ 85714
Registration Nos.: 45117–1
Registrant: Patterson Products Co.
Address: 2950 S. Eighth St., Ste F–1, Beaumont, TX 77701
Registration Nos.: 45162–1
Registrant: Pacific Swimming Pool Corp.
Address: 9533 SW. 40th St., Miami, FL 33165
Registration Nos.: 45258–1
Registrant: Refinement Technology Labs Inc.
Address: 1407 North Providence Rd., Columbia, MO 65201
Registration Nos.: 45262–1
Registrant: Sunrise Soap Company, Inc.
Address: 620 W. Center Street, #6, N. Salt lake, UT 84054
Registration Nos.: 45302–1 thru 10
Registrant: Pool Care Inc.
Address: #36 West Lake St., Tarpon Springs, FL 33589
Registration Nos.: 45322–1
Registrant: D M Labs Corp.
Address: 23007 Mobile Ave., Canoga Park, CA 91307
Registration Nos.: 45345–1
Registrant: Rivera Pool Co.
Address: 2265 Dundee Rd., Winter Haven, FL 33880
Registration Nos.: 45404–1
Registrant: M.S. Pool Service
Address: 3001 Pioneer Trail #57, New Smyrna Beach, FL 32069
Registration Nos.: 45448–1
Registrant: BIO AG Enterprises
Address: P.O. Box 42815–38, Houston, TX 77042
Registration Nos.: 45459–3
Registrant: Energy Support Corp.
Address: Box 87, Westwego, LA 70094
Registration Nos.: 45693–1–2
Registrant: Capitol Sanitizing Systems
Address: 2300 Pimmit Dr., Falls Church, VA 22043
Registration Nos.: 45725–2–5
Registrant: Northeast Packaging Inc.
Address: 25 Connair Rd., Orange, CT 06477
Registration Nos.: 45746–2–4–5–6–7–8–11–12
Registrant: San Juan Pools of Hillsborough County, Inc.
Address: 4109 W. Buffalo Ave., Tampa, FL. 33614
Registration Nos.: 45752–1
Registrant: All Chemical Supply & Equipment Co.
Address: 4801 Pembroke Rd., Hollywood, FL 33021
Registration Nos.: 45898–1 thru 21
Registrant: The James-Scott Company
Address: 336 Hillcrest Street, El Segundo, CA 90245
Registration Nos.: 45984–2
Registrant: Andy's Independent Pest Control
Address: P.O. Box 3251, 4401 S.I. 35-Town & Country Mall, Temple, TX 76501
Registration Nos.: 45997–1
Registrant: Ecco Chemical Co., Inc.
Address: 2651 Sterling Acre Dr., Tucker, GA 30084
Registration Nos.: 46013–1–2–3
Registrant: Anchemco Inc.
Address: 2566–A McMuller-Booth Rd., Clearwater, FL 33519
Registration Nos.: 46053–1
Registrant: Halifax Aquatech Pools
Address: 140 East Mason Ave., Daytona Beach, FL 32014
Registration Nos.: 46131–1
Registrant: Atlantic Pool Store
Address: 3007 North State Rd. H7, Hollywood, FL 33021
Registration Nos.: 46159–1
Registrant: Engineering Services & Products Co.
Address: 214 Old Main St., Rocky Hill, CT 06067
Registration Nos.: 46200–1
Registrant: Valley & Universal Supply, Inc.
Address: P.O. Box 4084, Bethlehem, PA 18018
Registration Nos.: 4625–1
Registrant: A-Best Chemicals & Supply
Address: 1621 N. Magnolia, Ocala, FL 32670
Registration Nos.: 46575–1
Registrant: Cassco Inc.
Address: 38 N. West Jersey Ave., Woodbury Heights, NJ 08097
Registration Nos.: 46692–1
Registrant: Crystalene, Inc.
Address: Box 7787, Columbus, GA 31908
Registration Nos.: 46694–2–3–4
Registrant: Carolina Chem Services Inc.
Address: P.O. Box 40, North, SC 29112
Registration Nos.: 46728–1–2–3–4–5–6–8–9
Registrant: F.G. Products
Address: 3310 Reynolds Rd., Lakeland, FL 33801
Registration Nos.: 46784–1
Registrant: Pitcher Hill Pool Supply

Address: SO. Bay & Taft Roads, N. Syracuse, NY 13212
Registration Nos.: 46860–1
Registrant: Admiral Pools
Address: 4015 Kathryn St., Sarasota, FL 33583
Registration Nos.: 46863–1
Registrant: Hackett and Gaskin
Address: 651 63rd St., Oakland, CA 94609
Registration Nos.: 46931–1
Registrant: The Agriculture & Nutrition Co.
Address: 5220 Speaker Rd., Kansas City, KS 66106
Registration Nos.: 46946–19–60–170–171–194–238–243–245
Registrant: McGrayel Co.
Address: 3386 S. Maple Ave., Box 12362, Fresno, CA 93777
Registration Nos.: 46978–1–2–3
Registrant: Southern Water Services
Address: 4421 Oakdale Rd., Smyrna, GA 30080
Registration Nos.: 47076–1
Registrant: Eastern Equine Enterprises
Address: 592 County Rd #1302, P.O. Box 392, Ashland, OH 44805
Registration Nos.: 47088–1
Registrant: Evrkleen Corp.
Address: 7827 NW. 15th St., Miami, FL 33126
Registration Nos.: 47113–1
Registrant: Care-Free Pool Supply
Address: Box 3456, Apollo Beach, FL 33570
Registration Nos.: 47120–1
Registrant: National Research Co.
Address: 4730 Noyes St. H218, San Diego, CA 92109
Registration Nos.: 47155–1
Registrant: Crown Services
Address: 2725 Via Casa Loma, San Clemente, CA 92672
Registration Nos.: 47278–1 thru 5
Registrant: Buccaneer Pool Supply & Service
Address: 3648 A. Henderson Blvd., Tampa, FL 33609
Registration Nos.: 47318–1
Registrant: Richard D. Stanton
Address: 5253 N. Dixie Highway, Pompano Beach, FL 33064
Registration Nos.: 47476–1
Registrant: Perochem Inc.
Address: 3451 Torrance Blvd., Torrance, CA 90503
Registration Nos.: 47525–1 thru 9
Registrant: Caf-Fey Chemical & Pesticide
Address: 2640 Woodland Ave., Louisville, KY 40211
Registration Nos.: 47663–1–2
Registrant: Luli Pools Inc.
Address: 5285 W. 20th Ave., Haileah, FL 33012
Registration Nos.: 47673–1
Registrant: Woody Riggs Co.
Address: 5027 SE. 107th St., Bellview, FL 32670
Registration Nos.: 47867–1–2
Registrant: Wiz Chemical Corp.
Address: Box 687, Bala Cynwyd, PA 19004
Registration Nos.: 47923–2–3–4
Registrant: Tristate Chemical Corp.
Address: 101 Elseden Bldg., 7710 Tanner Land, Florence, KY 41042
Registration Nos.: 48004–1–2
Registrant: Atlantic Pool and Patio
Address: 201 E. Granada Blvd., Ormond, Beach, FL, 32074
Registration Nos.: 48057–1
Registrant: Metro Products
Address: 2912 Kings Rd., A214, Dallas, TX 75219
Registration Nos.: 48114–1
Registrant: Serat Inc.
Address: 8403 Rednock Lane, Miami Lakes, FL 48139
Registration Nos.: 48139–1–3–4–5
Registrant: Sun City Pool Supply
Address: 1897 Highland Ave. S., Largo, FL 33516
Registration Nos.: 48170–1–2
Registrant: Bayside Chemical
Address: P.O. Box 4932, Corpus Christi, TX 78405
Registration Nos.: 48216–1
Registrant: Argo-K Corporation
Address: 5750 Main St. NE., Minneapolis, MN 55432
Registration Nos.: 48222–1 thru 4
Registrant: United Scientifc Inc.
Address: 723 The Parkway, Richland, WA 99352
Registration Nos.: 48366–1
Registrant: Roach Vanish
Address: Box 6739, New York, NY 10128
Registration Nos.: 48369–1
Registrant: Trichem
Address: 306 S. Harrington St., Raleigh, NC 27603
Registration Nos.: 48455–1 thru 5
Registrant: Charles F. Hudson, Jr. D/B/A/ Chuck Hudson
Address: 8 Clear Way, Ocala, FL 32672
Registration Nos.: 48665–1–2
Registrant: Pools of Distinction
Address: 1400 St., Rd 44, E. Unit 4, Pineview Plaza, Crystal River, FL 32629
Registration Nos.: 48703–1
Registrant: Bernelco Inc.
Address: 8009 Standley St., Fort Worth, TX 76118
Registration Nos.: 49109–1
Registrant: AB Tri-State Termite & Pest Control
Address: 1955 W. Fayetteville, AR 72701
Registration Nos.: 49209–1
Registrant: Intergrated Pest Management Systems
Address: 3601 Magic Drive #904, San Antonio, TX 78229
Registration Nos.: 49315–2 thru 4
Registrant: Klatt Chemical Co.
Address: 1317 Oak Ave., Evanston, IL 60201
Registration Nos.: 49549–1
Registrant: Pep-Kote Products, Inc.
Address: Box 23747, Pleasant Hill, CA 94523
Registration Nos.: 49596–1
Registrant: Conceptus Investment Corp.
Address: 74–990 Joni Dr., Bldg 3–A, Palm Desert, CA 92260
Registration Nos.: 49774–1
Registrant: Brower's Watercare Service, Inc.
Address: 328 N. Broomville, Springfield, MO 65806
Registration Nos.: 50083–1–2–3
Registrant: ACS Inc.
Address: 515 S. 21st Ave., Hollywood, FL 33020
Registration Nos.: 50172–1
Registrant: Complete Chemical Services, Inc.
Address: Box 1860, Hollywood, FL 33020
Registration Nos.: 50173–1
Registrant: Aqua Guard, Inc.
Address: RT. 15, Box 588, Tyler, TX 75707
Registration Nos.: 50402–1 thru 6
Registrant: Water Watcher
Address: Box 1513, Liberty, TX 77575
Registration Nos.: 50417–1–2
Registrant: Compuchem Corp.
Address: 2371 Belmont Ave., Bronx, NY 10458
Registration Nos.: 50418–1
Registrant: Pac-Tec, Inc.
Address: 555 Boston Post Rd., Milford CT, 06460
Registration Nos.: 50429–1 thru 11
Registrant: The Pool Specialist of Ft. Pierce
Address: 1717 SO. U.S. #1–Royal Palm Shoppes, Ft. Pierce, FL 33450
Registration Nos.: 50499–1
Registrant: Radd Chemical Co.
Address: Merion Mills Business Center, Conshohocken, PA 19428
Registration Nos.: 50560–1–2–3
Registrant: Berg Chemical Co.
Address: 920 East 132 St., Bronx, NY 10454
Registration Nos.: 50728–1–2
Registrant: Zenco
Address: 3667 Blake St. Denver, CO 80205
Registration Nos.: 50742–1 thru 3
Registrant: Town Square Patio Shop
Address: 1821 West Brandon Blvd., Brandon, FL 33511

Registration Nos.: 50768–1
Registrant: Pro Chem Labs
Address: Box 2463, Conroe, TX 77305
Registration Nos.: 50787–2
Registrant: Stop-A-Bug, Inc.
Address: 61–15 98th St., Rego Park-Queens, NY 11374
Registration Nos.: 50908–1
Registrant: John H. Forsythe
Address: Box 896, Riverview, FL 33569
Registration Nos.: 51024–1
Registrant: Smittys Pool Equipment, Inc.
Address: 1018 NE. 44th St., Fort Lauderdale, FL 33334
Registration Nos.: 51104–1
Registrant: Pool N' Patio World of Brandon
Address: 919 Lithia Rd., Brandon, FL 33511
Registration Nos.: 51146–1
Registrant: Howard's Hardware
Address: 7041 Taft St., Hollywood, FL 33023
Registration Nos.: 51191–1
Registrant: BRJ Industries, Inc.
Address: 152 Messner Dr., Box 970F, Wheeling, IL 60090
Registration Nos.: 51414–1–2
Registrant: LaCrosse Pool Center
Address: 319 Lang Dr., LaCrosse, WI 54603
Registration Nos.: 51455–1
Registrant: Astro Water Engineers
Address: Box 182, Western Springs, IL 60558
Registration Nos.: 51515–1 thru 3
Registrant: J&C Products
Address: 911 Pine St., Fern Park, FL 32730
Registration Nos.: 51559–1
Registrant: E & G Industries, Inc.
Address: 3535 Waldorf Drive, Toledo, OH 43611
Registration Nos.: 51679–1
Registrant: Pacific Research Associates
Address: 2816 E. Coast Hwy. Suite 2, Corona Del Mar, CA 92625
Registration Nos.: 52253–1 thru 3
Registrant: Precision Coating Systems Inc.
Address: P.O. Box 36, Farmingdale, NJ 07727
Registration Nos.: 52367–1–2
Registrant: Cardoy Corporation
Address: 2246 Camino Ramon, Box 5025, San Ramon, CA 94583
Registration Nos.: 52427–1
Registrant: Interiors By Marie
Address: 6601 Norwood Ave., Jacksonville, FL 32208
Registration Nos.: 52500–1
Registrant: New Blends, Inc.
Address: 458 Whitney St., San Leandro, CA 94577
Registration Nos.: 52501–1
Registrant: Church Soap & Chemical Co.
Address: 7205 S. Chicago, Chicago, IL 60619
Registration Nos.: 52557–1
Registrant: Drug-A-Bug Company
Address: Box 355 C, Rt. #3, Leeds, AL 35094
Registration Nos.: 52606–1
Registrant: Lion Chemical Co.
Address: Box 1900, Claremore, OK 74018
Registration Nos.: 52747–2
Registrant: American Industrial Chemical Corp., Inc.
Address: 1111 N. Westshore Blvd. Suite 602, Tampa, FL 33607
Registration Nos.: 52787–1–2
Registrant: CMY Industries, Inc.
Address: 660 W. Lake St., Chicago, IL 60606
Registration Nos.: 52980–1 thru 6
Registrant: Germ-X Corp.
Address: 8625 Biscayne Blvd., Miami, FL 33138
Registration Nos.: 53389–1
Registrant: Darth Products
Address: Box 727, Eagle, ID 83616
Registration Nos.: 53571–1
Registrant: International Pesticide Label Exchange
Address: 7210 SW. Fifth Ave., Miami, FL 33143
Registration Nos.: 53975–1
Registrant: The Chemist Co.
Address: 3621 Edgefield Dr., Memphis, TN 38128
Registration Nos.: 54034–1–2
Registrant: Bak-Mar Products
Address: 824 Wilkerson, Mesquite, TX 75149
Registration Nos.: 54070–20205
Registrant: Environmental Resources Corp.
Address: 215 Liberty Square, Norwalk, CT 06852
Registration Nos.: 54280–1 thru 4
Registrant: Ashley A. Ansari DVM PHD
Address: 104 Fyfe Ct., Cary, NC 27551
Registration Nos.: 54456–3 thru 9
Registrant: Trenton Sales, Inc.
Address: 801 W. 13th Street, Houston, TX 77008
Registration Nos.: 54774–1
Registrant: Triad Laboratories, Inc.
Address: Box 8027, Greensboro, NC 27419
Registration Nos.: 56151–1–2–3
Registrant: Chem Designs
Address: Box 1420, Candler, NC 28715
Registration Nos.: 56210–1–2–3–4–5–9–10–11
Registrant: Midwest Equipment Co.
Address: Box 640159, Kenner, LA 70064
Registration Nos.: 56338–16
Registrant: Summit Laboratories, Inc.
Address: 9042 Marshall Court, Westminster, CO 80030
Registration Nos.: 56843–1
Registrant: Yucan, Inc.
Address: Box 573, Yuma, AZ 85364
Registration Nos.: 57036–1

Dated: November 4, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

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federal register

Friday
November 18, 1988

Part VII

Consumer Product Safety Commission

16 CFR Parts 1306 and 1500
Ban of Lawn Darts; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1306 and 1500

Ban of Lawn Darts

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Lawn darts are devices with elongated tips that are used in an outdoor game by being thrown upward and striking the ground tip first. In this notice, the Commission bans lawn darts because they present a risk of puncture wounds, including skull punctures.[1]

A regulation, issued in 1970 by the Food and Drug Administration under the Federal Hazardous Substances Act ("FHSA") and now administered by the Commission, currently bans lawn darts, except for those intended for adult use that (1) are labeled to warn against use by children, (2) include instructions for safe use, and (3) are not sold by toy stores or by store departments dealing predominantly in toys or other children's articles. Despite these restrictions, which are intended to ensure that lawn darts are sold only for use as a game of skill by adults, children have continued to suffer serious injuries and deaths while playing with lawn darts. Accordingly, the Commission proposed to prohibit the sale of lawn darts that are intended to stick in the ground, on the basis that these darts present a risk of skull punctures.

After considering the comments received on the proposal and other information, the Commission concluded that whether a lawn dart is intended to stick in the ground is an inadequate criterion for whether a dart presents a significant risk of skull puncture injury. In addition, the Commission is unable to determine that any devices with elongated tips that can perform as lawn darts would not present this risk. Accordingly, the Commission is banning all lawn darts.

This action also satisfies a recent congressional directive, signed into law by the President on November 5, 1988, that the Commission revoke the FHSA exemption that allows the sale of lawn darts, under certain restrictions, unless the Commission finds that such products do not have the potential for causing puncture wound injury. Since the Commission is unable to find that any lawn dart would not have the potential to cause puncture wound injuries, no lawn darts are exempted from this ban.

DATE: The ban is effective December 19, 1988, as to products in the chain of distribution on or after that date.

FOR FURTHER INFORMATION CONTACT: Christine Nelson, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6400.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Commission was created in May of 1973. Prior to that time, the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1276, was administered by the Food and Drug Administration ("FDA"). Section 2(Q)(1)(A) of the FHSA, 15 U.S.C. 1261(Q)(1)(A), provides that the term "banned hazardous substance" includes "any toy, or other article intended for use by children, which is a hazardous substance." The Child Protection and Toy Safety Act of 1969 (83 Stat. 187–190) amended the FHSA to provide that any toy or other article intended for use by children may be classified as a hazardous substance if it is determined that the article presents an electrical, mechanical, or thermal hazard 15 U.S.C. 1261(F)(1)(D). Pursuant to this authority, the FDA, on November 17, 1970, proposed, among other things, to declare that lawn darts are banned toys because they present a mechanical hazard and an unreasonable risk of injury. 35 FR 17664.

The FDA received only one comment concerning the proposal to determine that lawn darts present a mechanical hazard. That comment stated that the large, outdoor-type darts are intended for use by adults as an outdoor sport or game. The comment contended that suitable labeling could be devised to inform parents or other adults of the necessity of carefully supervising children if they are to be permitted to play the game and to give other information relating to the safety of all nonplayers in the immediate area.

After considering this comment, the FDA determined in its final rule, published December 19, 1970, that "lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury, or other injury" presented a mechanical hazard within the meaning of the FHSA. 35 FR 19266. However, the final rule (as summarized below) also provided that the following types of lawn darts will not be included within the term "banned hazardous substance": Lawn darts and similar sharp-pointed articles not intended for toy use and marketed solely as a game of skill for adults, provided such articles:

(i) Bear the following statement on the front of the panel of the carton and on any accompanying literature:

Warning: Not a toy for use by children. May cause serious or fatal injury. Read instructions carefully. Keep out of the reach of children.

Such statement shall be printed in a sharply contrasting color within a borderline and in letters at [least] one-quarter inch high on the main panel of the container and at least one-eighth inch high on all accompanying literature.

(ii) Include in the instructions and rules clear and adequate directions and warnings for safe use including a warning against use when any person or animal is in the vicinity of the intended play or target area.

(iii) Are not sold by toy stores or store departments dealing predominantly in toys and other children's articles. 35 FR 19266, 19267.

A petition for judicial review of this regulation was filed by a lawn dart manufacturer, and the regulation was upheld. *R.B. Jarts, Inc. v. Richardson*, 438 F.2d 846 (2d Cir. 1971).

Since May of 1973, when the responsibility for administering the FHSA was transferred to the Commission, the Commission has periodically inspected samples of lawn dart labeling and instructions and surveyed marketing practices for lawn darts to determine whether the manufacturers, importers, and sellers of lawn darts are complying with the Commission's regulations under the FHSA.

The ban of lawn darts is codified in section 1500.18(a)(4) of Title 16 of the Code of Federal Regulations ("CFR"). The exemption quoted above for those lawn darts that have the specified labeling and instructions and that are not marketed in toy stores or in store departments dealing predominantly in children's articles is codified at 16 CFR 1500.86(a)(3).

In 1984, the Commission received reports that lawn darts were being sold in certain toy stores. As a result, the Commission's staff inspected at least 77 retail stores and found seven stores that were selling lawn darts in violation of the ban and exemption. Of the seven violative retail stores, six were toy stores, and three of these were part of the same nationwide chain. Products of four lawn dart importers had labeling violations. The retail sales and labeling violations discovered by these

[1] All three Commissioners (Chairman Terrence Scanlon, Commissioner Anne Graham, and Commissioner Carol Dawson) voted to approve this **Federal Register** notice. Chairman Scanlon and Commissioner Graham filed statements concerning their votes that are available from the Commission's Office of the Secretary.

inspections were corrected, and the Commission issued a consumer safety alert in July 1985 warning of the hazards of letting children play with lawn darts.

In June 1987, the Commission's staff examined the labeling on lawn darts marketed by 14 firms, and products from all 14 firms were found to have labeling violations. Products of eight of the firms were considered to have serious labeling violations, *i.e.*, no required warning statement on the front panel of the package. Other labeling violations included one or more of the following: the type size of the required warning statement was smaller than that specified in the exemption, the warning statement was absent from the instructions or was not printed within a borderline as required, and the instructions lacked clear and adequate directions and warnings for safe use.

In addition, Commission field investigators visited 122 retail stores around the country. Included in the 122 stores were 36 toy stores, 60 variety or department stores, and 26 sporting goods stores. Fifty-three of the stores were selling lawn darts, and 18 of these were displaying the product with or in close proximity to toys or sporting goods intended primarily for children.

As a result, the Commission's compliance staff met on July 17, 1987, with importers and manufacturers of lawn darts; a representative from the Sporting Goods Manufacturers Association also attended that meeting. At the meeting, the staff discussed five voluntary actions that could be taken by the firms to help assure compliance with the exemption from the ban and to increase consumer awareness of the hazards associated with lawn darts in the hands of children. These actions were:

1. The front panel warning label should be modified to make it more conspicuous and readable.

2. Place a warning label on one fin of each lawn dart in a color that contrasts with the fin. (The industry attendees at the July 17, 1987, meeting indicated that they would achieve contrast by means other than color, such as by contrasting texture.)

3. Change the design of lawn darts to prevent modification, or include a warning against modification with the instructions.

4. Include information on how to display lawn darts with each shipment of lawn darts to retailers.

5. Stop packaging lawn darts in combination sets with other games.

Additional information on these recommended actions is given in the proposal. 53 FR 28657.

After the meeting on July 17, 1987, the staff wrote to all known lawn dart importers and to the known domestic manufacturer and the company that distributes its products. These letters went both to those that attended the meeting and to those that did not attend. The letters described the five voluntary actions and asked the firms to state in writing whether they were willing to take the actions requested. A total of 20 firms received letters, including additional importers of lawn darts that were identified between July and September.

Nineteen of the firms responded in writing or by telephone. Seven firms stated that they would carry out the five requests (except for the contrasting color on lawn dart fins); several of these firms requested additional slight and modifications of the terms.

Two major firms stated in writing that they would carry out only the first four requests. One of these firms also stated that it was in favor of the Commission making mandatory all of the voluntary actions which were requested.

Two firms stated general support for the voluntary actions the compliance staff had requested, but did not address the specific requests. Eight firms stated that they intended to stop importing lawn darts.

On July 30, 1987, the Commission issued a news release about lawn dart injuries and deaths. In the release, the Commission provides details on the existing ban, the exemption, and the hazard and resulting injuries. The release urges consumers to keep lawn darts away from children and asks consumers to report violations of the ban or exemption to the Commission.

On October 1, 1987, the Commission met to consider what actions would be appropriate to address the continuing injuries and deaths to children that occur when children play with lawn darts. By a unanimous vote, the Commission decided at its October 1, 1987, meeting to issue an ANPR indicating that the Commission might, among other actions, either require the five actions requested of industry at the July 17, 1987, meeting with the staff or ban all lawn darts and similar pointed objects usually intended for outdoor use and having the capacity for causing puncture wound injuries.

The Commission indicated that whatever action ultimately would be taken would take into account the results of a surveillance program to be conducted by the Commission's staff three months after publication of the ANPR; the object of the surveillance was to determine if the industry is in substantial compliance with the existing regulations and with the actions requested at the July 17, 1987, meeting described above. The Commission stated further that its final action would also depend upon an evaluation of whether such voluntary or mandatory standards, if enforced, could be expected to protect consumers from unreasonable risk of injuries. The staff was further directed to vigorously enforce the current FHSA provisions on lawn darts and to issue a consumer alert annually.

The ANPR was published on October 20, 1987. 52 FR 38935.

The Commission brought two cases in U.S. District Courts against major retail chains for lawn dart violations. In these cases, the defendants signed consent decrees to settle the Commission's concerns about the distribution of noncomplying lawn darts. In one of these cases, the Commission recently sought a contempt of court citation against the defendant for a subsequent violation of the consent decree, but the court declined to order this relief, stating that the defendant was nevertheless in substantial compliance with the consent decree.

In addition, the Commission requested the U.S. Customs Service to consider including lawn darts in the Operation Toyland program. This will enable CPSC and the Customs Service to examine incoming shipments of lawn darts.

Pursuant to the Commission's direction at the October 1, 1987, meeting, the Commission staff visited 112 retail stores to determine compliance with the current restrictions on the sale of lawn darts. Of these 112 stores, only 31 were selling lawn darts. Twenty-nine of the 31 were variety or department stores, one was a toy store, and one was a sporting goods store. Of the 31 stores selling lawn darts, 14 were in violation of lawn dart requirements. Violations consisted of displaying lawn darts for sale in a toy store or toy department (8 stores) or offering lawn darts for sale that violated labeling requirements (8 stores). Two stores were committing both types of violations.

The staff also identified 18 importers or manufacturers of lawn darts. Of these, 17 firms were distributing, or had recently distributed, lawn darts with labeling violations. Ten of these firms indicated that they do not intend to import, manufacture, or sell lawn darts in the future. Seven firms are known to intend to continue to import lawn darts.

With regard to whether the firms were willing to implement voluntarily the five actions requested at the July 17, 1987, meeting, one firm indicated that it would not comply voluntarily with the

requests. Except for one firm that was undecided about whether it would sell lawn darts in combination sets with other games, the companies indicated that they would comply with the five requests on various, and sometimes indefinite, schedules.

The Commission received 11 comments on the ANPR that was published on October 20, 1987. After considering these comments and other available information, the Commission concluded that there was no feasible standard that could adequately reduce the risk of skull puncture injuries from lawn darts and that actions of the type that had been discussed with the industry previously will not be effective. Accordingly, the Commission proposed to ban any lawn dart that has a rigid elongated tip and that is intended to be used outdoors and thrown into the air so that it will stick in the ground, as well as similar products for outdoor use that are thrown in the same manner and are capable of sticking in the ground. The proposal was phrased in this manner because it was believed that any lawn dart that was capable of sticking in the ground would also present a risk of skull puncture injury. The express inclusion of both darts intended to stick in the ground and darts capable of sticking in the ground was intended to preclude arguments about subjective or unexpressed intentions. 53 FR 28657 (July 29, 1988).

Shortly before the Commission's scheduled meeting to consider whether to issue a final rule banning hazardous lawn darts, the Congress passed H.R. 5552, which provides:

> That notwithstanding any other provision of law, not later than 60 days after the date of enactment of this Act, the Consumer Product Safety Commission shall amend its regulations to revoke [the] exemption regarding lawn darts and other similar sharp-pointed toys contained in section 1500.86(a)(3) of title 16, Code of Federal Regulations, unless the Commission finds that such products do not have the potential for causing puncture wound injury.

On November 5, 1988, shortly after the Commission voted to ban lawn darts, this legislation was signed by the President. The action that the Commission is independently taking in this notice will fulfill the congressional directive. Furthermore, as discussed more fully below, the Commission is not aware of any lawn darts for which it can make the finding that the darts do not have the potential for causing puncture wound injury. The relationship between the Commission's action and H.R. 5552 is discussed in more detail in Section I of this notice.

B. The Product and the Scope of the Rule

Lawn darts are devices with elongated tips that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground tip first. Often, lawn darts are used in a game where the darts are thrown at a target or other feature on the ground. The type of lawn darts that have generally been available in the past and that have demonstrated their ability to cause skull puncture injuries typically have a metal or weighted plastic body, on the front of which is an elongated metal shaft about ¼ inch in diameter. These darts have a shaft on the rear of the body to which plastic fins are attached. These darts are about a foot in length and weigh about one quarter to one half pound. These darts are intended to stick in the ground when thrown.

Prior to the proposal, the Commission was aware of two additional types of games using devices that did not appear to present the risk of skull puncture injuries presented by the darts described above. One of these types uses a soft, usually plastic, body with an approximately hemispherical mushroom- or tulip-shaped head of relatively large diameter that is weighted so that the large end impacts the ground. This device is not considered to be lawn dart, and the Commission concluded that this type does not present a significant risk of skull puncture injuries.

Another type of lawn dart thought before the proposal, on the basis of the manufacturers description and allegation that the dart would not penetrate kraft paper, not to present the same risk of skull puncture injuries as do other elongated-tipped darts. This dart resembles the shape of the older type of lawn darts, but is lighter and the tip is made of a relatively soft and flexible material of about the consistency of a pencil eraser. Furthermore, the tip was described by the manufacturer as being mounted in a flexible base, so that the tip as a whole could also flex. These darts are designed to be used with a target that will entrap a dart that falls on the target.

Because the two types of devices described above were thought to not present the risk of skull puncture injuries presented by metal and rigid-plastic tipped darts, the preamble of the proposal stated that these tulip-shaped and extremely-flexible-tipped darts were not included within the scope of the proposed ban. However, subsequent tests by the Commission's staff of a sample of what was supposed to be the flexible-tipped dart described above showed that it could puncture a laminate that had been developed by the staff in an attempt to create a test target that could indicate when a dart presented a risk of puncturing a child's skull. (This laminate is discussed more fully in Section E(1)(j) of this notice.) Furthermore, this dart could easily puncture kraft paper, contrary to the manufacturer's previous representation. In addition, the dart is capable of sticking in the ground under conditions that could often exist when the darts are being used, and the dart would thus actually have been covered by the proposed ban.

Because the manufacturer's statements that the dart would not stick in the ground nor puncture kraft paper were not borne out by the staff's examination of the sample dart that was submitted, and because the dart penetrates the target laminate described above, the Commission is not able to find that this dart does not present a risk of skull puncture injury and should be excluded from the final ban. Accordingly, this dart is banned also.

As a result of comments on the proposed ban, the Commission became aware of other, prototype darts that visually resemble the older, rigid-tipped darts but that are lighter and have tips of plastic that are much more flexible than the metal-tipped darts that have caused skull puncture injuries and the rigid-plastic tipped darts that the Commission staff believes also present a risk of skull puncture injuries. Under some conditions, these darts are capable of sticking in the ground and were included within the scope of the proposed ban. After examining these prototype darts, the Commission's staff found that these darts also penetrated the laminate described above, thus raising the possibility that these darts present a risk of skull penetration injuries. The manufacturer of these darts has submitted no data that would show that these darts are incapable of such injuries, and the Commission finds that there are no differences in the functional or risk characteristics of these darts and darts that are known to have caused skull puncture injuries that would warrant not banning these darts. Therefore, these darts are also included in the ban.

The ban is not intended to include such items as arrows, horseshoes, javelins, penknives, and the like, nor is it intended to apply to indoor dart games that use a vertically-placed target, such as "English darts" or "American darts." The Commission intends for the ban to be severable as to

different types of lawn darts. Thus, if the ban is held to be invalid as to any subcategory of lawn darts, the Commission intends that the ban will remain in effect as to the remaining types.

C. Risk of Injury

The risk that the Commission is addressing in this proceeding is that of puncture of the skulls of children caused by lawn darts being used by children. Since all lawn darts are being banned, the rule will also address all puncture wounds and other types of injuries caused by lawn darts.

As mentioned above, the potential for these devices to cause skull puncture injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves. This is because the tips do not appear sharp enough to present an obvious danger of puncture. The combined factors of weight, the narrow elongated shaft, the speed that the dart is traveling at the time of impact, and the thickness of the child's skull at the point of impact create the risk.

The Commission has predicted the potential for skull puncture injury by applying a mathematical model originally developed for bullets to estimate the probability of penetration of the skull by lawn darts with metal tips. The model estimates these penetration probabilities for various lawn darts parameters, such as tip diameter, dart weight, drop height, and skull thickness. From this model, a typical lawn dart weighing approximately ¼ lb., with a metal tip with a diameter of 0.5 cm (0.2"), and dropping from a height of 12 feet was estimated to have a probability of penetration of 37 percent for the average skull thickness of male and female children 3 years of age. It is reasonable to expect that a lawn dart will reach a height of twelve feet above a child's head during normal use. The probability of penetration increased to 92 percent for the minimum skull thickness of a three-year-old.

As noted above, the elimination of lawn darts that present an unreasonable risk of a skull puncture injuries will also eliminate the punctures of other parts of the body, as well as the lacerations, fractures, and other injuries, that have been associated with lawn darts in the past. This also carries out the will of Congress expressed in H.R. 5552, which is discussed in Section I of this notice.

The Commission estimates that about 6,700 injuries from lawn darts were treated in U.S. hospital emergency rooms between January 1978 and December 1987. This represents an average of 670 injuries per year treated in emergency rooms. Approximately 57 percent of the injuries involved the head, face, eye, or ear. Just under 40 percent of the injuries were diagnosed as puncture wounds. Approximately 4 percent of the injured victims were hospitalized (on the average, approximately 25 per year), including all of the victims sustaining injuries reported as fractures. Over 75 percent of the victims were under age 15; about 50 percent of the victims were under age 10. In addition, Commission records dating back to 1970 show that at least three children have been killed by injuries associated with lawn darts. These children were 4, 7, and 13 years old.

In the 25 lawn dart injury reports for which information about the user of the lawn darts was available, the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

D. Statutory Authorities

If lawn darts as a class are deemed to be articles intended for use by children, the darts would be regulated under the provisions of the FHSA for mechanical hazards of children's products. Section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D); section 30(d) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2079(d). If at least some lawn darts were deemed to be children's products, while other lawn darts might not be children's products, a regulatory proceeding to address all lawn darts could be conducted either under both the CPSA and the FHSA or under the CPSA alone, after a finding that it is in the public interest to do so as provided in Section 30(D) of the CPSA.

An article intended for use by children which has been declared by rule to be a hazardous substance is banned under section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), unless exempted. To effect a ban of lawn darts under the FHSA, the Commission is revoking the exemption at 16 CFR 1500.86(a)(3) and making the necessary changes in the terms of the general ban at 16 CFR 1500.18(a)(4).

The Commission is authorized, under section 7 of the CPSA, to promulgate a mandatory consumer product safety standard which sets forth certain performance requirements for a consumer product or which sets forth certain requirements that a product be marked or accompanied by clear and adequate warnings or instructions. 15 U.S.C. 2056. A performance, warning, or instruction standard must be reasonably necessary to prevent or reduce an unreasonable risk of injury. In addition, if the Commission finds that no feasible consumer product standard under section 7 would adequately protect consumers from an unreasonable risk of injury associated with lawn darts, the Commission may promulgate a rule under section 8 of the CPSA declaring some or all lawn darts to be banned products. 15 U.S.C. 2057.

The procedures and requisite findings to accomplish any of the mandatory regulatory alternatives under consideration under either or both acts are essentially the same; both acts use a three-stage rulemaking procedure. At each stage of the rulemaking, the Commission is required to consider certain topics and make specified findings, particularly about the status of voluntary standards and about the costs and benefits of the contemplated rule.

The requirements for promulgating a mandatory rule are set out in section 9 of the CPSA, 15 U.S.C. 2058, and section 3(f) of the FHSA, 15 U.S.C. 1262(f). An advance notice of proposed rulemaking ("ANPR") is the first step of a regulatory proceeding that could lead to a safety rule. The second step of the rulemaking procedure is the issuance of a proposed rule, which is followed by public comment on the proposal. As described above, the first two steps have already taken place. The third step, which is accomplished by this notice, is the issuance of a final rule.

As explained above, the ban being issued in this notice with respect to any lawn darts not "a toy, or other article intended for use by children" is being issued under Sections 8 and 9 of the CPSA. As to the products covered by that ban, the Commission concludes there is at this time no feasible consumer product safety standard that would adequately reduce or eliminate the risk of skull puncture injury.

Section 9(d)(1) of the Consumer Product Safety Act provides that the Commission shall either promulgate a consumer product safety rule or withdraw the proposed rule within 60 days after publication of the proposal, unless the Commission extends the 60-day period for good cause and publishes its reasons therefor in the **Federal Register**. In the case of the final ban of lawn darts, a 30-day period was provided for the submission of public comments on the proposal. Due to the need to consider the public comments, particularly the issue of whether any flexible-tipped darts should be exempted from the ban, and due to the

time required to prepare the staff's briefing materials and to prepare and revise the **Federal Register** notice to issue the ban, the rulemaking could not be concluded within the remaining 30 days of the 60-day period provided in section 9(d)(1) of the CPSA. Accordingly, for the reasons discussed above, the Commission extends the time for either promulgating the final ban or withdrawing the proposal until November 18, 1988.

In addition, on November 5, 1988, the President signed legislation directing certain action by the Commission with respect to lawn darts. This legislation is discussed in Section I of this notice.

E. Responses to the Proposal

The Commission received 13 written comments on the proposal. Comments opposed to the proposed ban were received from three firms which manufacture or distribute lawn darts, one former dart distributor, and the Sporting Goods Manufacturers Association. Comments in favor of the proposed ban were received from the Consumer Federation of America, the New York State Consumer Protection Board, the Puerto Rico Department of Consumer Affairs, the Michelle Snow Foundation [named after a child killed by a lawn dart injury], the Minnesota Attorney General, the town of Babylon, New York, an attorney who has represented a child injured by a lawn dart, and the mother of a child injured by a lawn dart.

In addition to written comments on the proposal, the Commission provided an opportunity for the oral presentation of comments, as required by section 9(d)(2) of the CPSA for consumer product safety rules, which was held on August 9, 1988. Two persons made presentations to the Commissioners at that time. One was the Vice President of Sales and Marketing for the domestic manufacturer of lawn darts, and the other was President of a company that markets those darts.

The significant issues raised by the comments, and the Commission's views on those issues, are explained below.

1. Comments opposed to the ban.

a. *Lawn darts are not unsafe compared to other products.* Several comments contended that it was unreasonable to ban lawn darts when other products that are not being considered for a ban injure more people. Examples given by the commenters of unregulated, but nonetheless dangerous, products included alcohol, tobacco, firearms, arrows, knives, javelins, English or American darts, sharp-pointed projectiles in general, horseshoes, bicycles, baseballs, bats, scooters, roller skates, skateboards, surfboards, "Saturday night specials," and drunk drivers.

In considering the substance of these comments, it is important to keep in mind that the Commission has no statutory authority to regulate risks assocated with alcoholic beverages, tobacco, firearms or their use, or motor vehicles or their use. Thus, any consideration of the reasonableness of regulating those risks is outside the Commission's statutory mandate.

As to the other products mentioned by the commenters as more dangerous than lawn darts, but not banned, the Commission notes that these products each present a unique combination of factors relevant to the decision of whether regulatory action is warranted. Among the factors the Commission is required to consider in determining whether to issue a performance standard or ban applicable to a product are: the number of deaths that will be prevented by the action; the number and severity of the injuries that will be prevented; the cost of the regulation for industry and consumers; and the need of the public for the consumer product subject to the rule, and the probable effect of the rule upon the utility, cost, or availability of such product to meet such need.

From the partial list given above of factors the Commission must consider in deciding to ban, or take other action with respect to, a product, it is clear that lawn darts differ markedly from the other products mentioned by these commenters with respect to the need and desire of the public for the product. There appears to be no strong attachment of the public to the game of lawn darts. Not one commenter wrote in to protest the proposed ban in his or her capacity as a recreational user of lawn darts. Thus, unlike most of the other games mentioned by these commenters, there is relatively little public desire for lawn darts that cannot be satisfied in other ways. Furthermore, there are numerous other lawn games that do not represent a risk of puncture injuries, including skull punctures, that could supply equivalent recreational value.

The stronger desire of the public for the other products listed by the commenters and the lack of equivalent substitutes for them are factors the Commission is required by statute to consider in determining whether such products should also be banned. In effect, the desire of the public for a product is a factor that could completely or partially offset, from a public policy standpoint, the deaths and injuries caused by the product. Therefore, the mere fact that other, more desired, products that produce more deaths and injuries are not banned does not lead to the conclusion that it is unreasonable or illogical to ban lawn darts.

b. *Low injury rate.* Commenters also argued that lawn darts should not be banned because the rate of three deaths in 17 years and 670 injuries treated annually in emergency rooms is quite low, especially considering that perhaps 1.5 million sets of darts are sold each year. The Commission agrees that this is a relatively low figure for deaths and injuries as recreational activities go. Nevertheless, the benefits of banning this product, even considering the desire of the public for it, bear a reasonable relationship to the costs of doing so. While the Commission does not take the idea of banning any product lightly, the availability of similar but non-lethal forms of recreation makes the continuation of these tragic injuries an unacceptable alternative.

c. *Darts not subject to current regulations.* A commenter noted that the earliest of the known deaths occurred before the currently required warnings and instructions were widely adopted. However, the later death and injuries show that these warnings and instructions are not completely effective in keeping these darts out of the hands of unsupervised children, and the early deaths still show the potential of the darts to cause death when used by children. Furthermore, even if the early deaths had not occurred, the costs and benefits of the ban would still bear a reasonable relationship to each other.

Commenters also noted that the latest known death from a lawn dart was caused by a dart that had been modified by removing the plastic fins from their original shaft at the rear of the weighted body of the dart and attaching the fins to the larger diameter shaft originally intended to serve as the tip. This modification results in the dart impacting on the original fin shaft, which is smaller in diameter than the original tip. The information available to the Commission's staff conflicts with the assertions of some commenters that the dart involved in this incident had been sharpened in some way.

The Commission's Engineering staff estimated that this modification would increase the chance of skull penetration or other serious injury by a factor of 1.6, based on the difference in diameters between the modified dart's tip and the intended tip. The Commission is unable to conclude whether this difference would have been sufficient to prevent the death in question had the dart not been modified. However, even if the dart had not been modified, there would

have been considerable potential for death or serious injury in this incident, and the fact that the dart was modified does not make the Commission conclude that a ban is unnecessary.

d. *User's responsibility.* Commenters pointed out that if the manufacturer's directions are followed, there will not be any injuries of children caused by other children using lawn darts. A commenter characterized the circumstances surrounding lawn dart injuries as a "total violation of common sense as well as explicit directions."

The deaths and injuries that continue to occur have made it clear that the present warnings and marketing restrictions have been insufficient to keep these products out of the hands of children, who will find them attractive and wish to play with them at least occasionally. The Commission staff's analysis of consumer attitudes and behavior (discussed in paragraph (e) and Section F, below) has indicated that further measures to market lawn darts only for adults would not prevent use by children. Particularly since the hazard of skull puncture is not necessarily apparent from a casual examination of the darts, the Commission does not believe that parental responsibility alone will prevent the injuries and deaths that would result from the continued sale of this product.

It is also unrealistic to hold children to standards of behavior and responsibility that would be appropriate for adults. Children cannot always be expected to exercise "common sense" when playing with a potentially dangerous object, especially when the danger is not necessarily obvious.

Thus, the Commission does not find these objections to the ban persuasive.

e. *Additional labeling and marketing restrictions.* Commenters argued that the additional five steps described in Section A of this notice will adequately reduce the risk. One commenter stated his belief that industry would voluntarily cease marketing lawn darts in combination sets with other games.

In order to determine whether these types of actions would be an adequate way to deal with the risk to children, the Commission's staff analyzed available information on consumer attitudes and behavior. This analysis is discussed in Section G of this notice under "Alternatives to the rule." After considering the staff analysis, the Commission concluded that efforts to market lawn darts for adult use only cannot be expected to preclude significant use by children. Accordingly, the Commission concludes that the actions under consideration previously will not adequately deal with this risk.

f. *Freedom of choice.* Commenters argued that a ban would violate the concept of "freedom of choice" that is an important part of living in a free society. While it is true that any ban, and many other regulatory actions, involve a restriction on choices available to various groups, the Commission has a responsibility to see that the marketing of products does not disregard the public interest in product safety. After considering the desire of the public for lawn darts in conjunction with the other costs and benefits of the proposed ban, the Commission concludes that the ban is warranted, for the reasons discussed above in the responses to other comments on the proposal.

g. *Inventory.* In the proposal, the Commission predicted that a ban that became effective in November would involve relatively few sets of lawn darts that were in the chain of distribution at that time. A manufacturer, however, commented that it had raw materials for about 50,000 sets, and a distributor commented that it had about 53,000 sets in inventory, which would involve a loss of over $100,000.

These adverse effects are within the range of effects that had been predicted by the Commission staff at the time of the proposal. In view of the need to curtail the deaths and injuries from lawn darts as soon as possible, and considering the vulnerable population involved, the Commission concludes that the adverse economic effects described by these commenters are insufficient to warrant abandoning or delaying the prohibition of hazardous lawn darts. See the discussion below concerning effective date.

h. *Effective date.* A commenter urged that the effective date be set so that wholesalers and retailers could exhaust their inventories before the prohibition becomes effective. This, according to the commenter, would involve an effective date of January 31, 1989, for wholesalers and an effective date of August 31, 1989, for retailers. The commenter contended that short-term demand for the product has been killed by adverse publicity and that therefore the only persons who would buy the darts during the extended period of the effective date would be persons who are specifically interested in having lawn darts.

As discussed in previous section (g), and in section G of this notice under "Costs," the Commission has concluded that the costs to manufacturers, wholesalers, and retailers of an effective date that is 30 days after publication of this notice are warranted in view of the need to restrict the number of sets of lawn darts going into the hands of consumers, some of which could be expected to cause further injuries or deaths to children who ultimately would be exposed to the darts in these sets. The commenter's argument that only persons interested in lawn darts will buy them if the effective date is extended is speculative, and, in any event, there is no reason to conclude that such darts will not end up being accessible to children. Accordingly, the Commission has decided not to extend the effective date for the purpose of allowing the exhaustion of inventory.

i. *One-time use.* A commenter expressed his belief that lawn darts are bought for special one-time occasions and are discarded after that use. This view conflicts with what the Commission staff has found in in-depth investigations of lawn dart incidents. Furthermore, even if this were true, the deaths and injuries that have occurred would have occurred in spite of that fact. Therefore, the Commission concludes that this argument contains no reason why a prohibition of lawn darts should not be implemented.

j. *Flexible tips.* In the proposal, the Commission noted that a type of lawn dart with a tip that was about as flexible as a pencil eraser, which the manufacturer stated was not intended to stick in the ground and would not pierce kraft paper, was not capable of sticking in the ground. This statement was based on the manufacturer's representation. In addition, during the comment period, two other types of darts were mentioned as possibly presenting less of a skull puncture hazard than the metal- or rigid-plastic-tipped darts that have been generally marketed in the past.

One of these darts was a nylon-tipped dart that the manufacturer contends is lighter and more resilient than the metal-tipped darts. According to the commenter, no customer complaint or insurance claim has been made with respect to this type of dart during the 8 years the commenter has marketed the product. The lack of complaints or insurance claims notwithstanding, the Commission's staff examined an example of that dart and concluded that its tip was sufficiently rigid and that it was sufficiently heavy that it presented a risk of injury similar to that of metal-tipped darts. Accordingly, the Commission concludes that it would not be appropriate to exclude this nylon-tipped dart from the category of prohibited lawn darts.

The other type of dart that was presented to the Commission as being less hazardous was one that had been developed by a commenter. The commenter, however, provided no data

by which the Commission could evaluate the potential for skull puncture presented by this dart. The dart in question had a tip that the Commission staff believes is made of polyethylene and that is much more flexible than the nylon tip discussed in the preceding paragraph.

The first sample of this flexible-tipped dart obtained by the Commission's staff was dropped onto a laminate intended to simulate the puncture resistance of a child's skull. The dart was dropped from 25 feet and did not penetrate the upper layer of the laminate. However, that particular dart had been manipulated by numerous persons at the Commission, who had manually bent its tip to see how stiff it felt, before the dart was tested by the drop test. This handling may have bent the dart's tip or made it more flexible. Other, supposedly identical, samples of this dart failed the drop test. In addition, some darts will pass the test on some attempts and fail it on others, thus raising a question about the reproducibility of the test. These differing results may be due to slight differences in the angle at which the dart hits the target when dropped or to other, unknown factors. Although the Commission ultimately decided not to promulgate the drop test as part of the regulation, the results obtained were sufficient to indicate that these flexible-tipped darts may have the potential for skull puncture injury and for other puncture wound injury.

For the reasons stated above, the Commission is unable at this time to find that there are differences in the functional or risk characteristics between these flexible-tip darts and rigid-tip darts that would warrant excluding flexible-tip darts from the ban issued below.

k. *Homemade darts.* One commenter stated that if lawn darts were not sold, consumers would make their own versions that could be more dangerous than the ones now on the market. This comment appears to be entirely speculative.

l. *Repurchase and returns.* The proposal stated the rule "does not require the repurchase of prohibited lawn darts by manufacturers, marketers, or retailers who have sold the darts to the next entity in the chain of distribution or to consumers." The Sporting Goods Manufacturers Association asked for clarification of this statement. Further discussion of this statement is given below.

The quoted statement was included in the proposal to make it clear that the rule does not require any manufacturer, marketer, or retailer to repurchase lawn darts sold before the effective date of the ban. Therefore, the only real obligation these parties would have to repurchase such lawn darts would depend on the contractual or other obligations between the seller and the purchaser arising under state or local law.

Of course, this interpretation is not intended to limit in any way the Commission's authority to seek relief against noncomplying products, or products with particular defects, under section 15 of the CPSA, 15 U.S.C. 2064, or Section 15 of the FHSA, 15 U.S.C. 1274. Relief under these sections could include repair, replacement, or refunds, if a substantial product hazard is proven. Nor is it intended to restrict in any way a manufacturer, distributor, or retailer that might wish to voluntarily issue a refund to its customers.

2. *Comments supporting the ban.* As noted above, 8 of the 13 comments received on the proposal supported prohibiting the sale of hazardous lawn darts. Among the reasons stated were: that because of lack of supervision or education, the product finds itself in the hands of very young consumers; that warnings have not been effective; and that selling only in stores other than toy stores does not convey the message that lawn darts are for adult use only. The mother of an 8-year-old boy who was permanently injured while throwing a lawn dart explained the seriousness of the injury to the boy's eye, noted that the medical expenses already exceeded $20,000, and stated that the dart involved did not belong to the boy or his family.

Some comments pointed out particular violations of the Commission's current regulations, and that, in some cases pointed out by the Minnesota Attorney General, the companies involved had agreed to stop selling lawn darts.

Some comments urged the Commission to recall darts now in the hands of consumers, in addition to banning futures sales. The Commission has the authority to order refund, replacement, or repair of certain hazardous products under specified circumstances under section 15 of the CPSA and section 15 of the CPSA, 15 U.S.C. 1274, 2064. However, the Commission does not believe that recall would be appropriate or effective in the case of lawn darts, for the following reasons.

The lawn darts now in the hands of consumers were legally sold pursuant to a specific exemption provided in the FDA regulation subsequently administered by the Commission and republished as 16 CFR 1500.86(a)(3). After administering a regulation that specifically allowed the sale of these products, the Commission does not consider it appropriate to seek a recall unless such action is clearly warranted. However, as explained in the following paragraph, it is not at all clear that a recall would result in a substantial number of refunds for the consumer or that the benefits of such action would warrant such a potentially expensive remedy.

The experience of the Commission's staff in examining used lawn darts is that it is usually impossible to determine the identity of the manufacturer or importer of the dart. This is because of the similar design of the darts and the lack of permanent labeling identifying the manufacturer or importer. Without the ability to determine which manufacturer or importer is associated with a particular dart, the remedy of a recall is not likely to be effective or in the public interest.

Furthermore, lawn darts are relatively inexpensive and can be discarded by consumers who no longer desire them. The Commission is unable to find at this time that the substantial costs that would be incurred by manufacturers or importers to give refunds and administer a refund program would be warranted.

A commenter urged that the Commission institute an information campaign using "wanted posters" showing lawn darts. The Commission intends to continue its information efforts about lawn darts that are already in the hands of consumers, and the Commission staff will consider whether the commenter's idea can be used for lawn darts or other products, as appropriate. Since this issue is separate from the question of whether to issue a ban of lawn darts, it need not be fully resolved at this time.

A commenter urged that the prohibition of lawn darts be put into effect as soon as possible, in order that products in inventory not be dumped on the market before the effective date. The Commission believes that the 30-day effective date provided in the rule issued below will accomplish the result desired by this commenter.

F. Regulatory Analysis

Introduction

The Commission has determined that even lawn darts that arguably are intended for the use of adults are likely to be used by children at various times. Accordingly, the Commission is taking action under both the FHSA and the CPSA, so as to reach all lawn darts, which have been determined to present a risk of skull puncture injuries and other puncture wounds to children, and

to eliminate potential arguments about whether any lawn darts can be considered to be intended for use by adults.

Under Section 3(i)(1) of the Federal Hazardous Substances Act ("FHSA") and Section 9(f)(2) of the Consumer Product Safety Act ("CPSA"), the Commission is required to publish with the regulation a final regulatory analysis containing

(A) A description of the potential benefits and potential costs of the regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs.

(B) A description of any reasonable alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential costs and benefits and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

15 U.S.C. 1262(i)(1), 2058(f)(2).

In addition, for proposed rules, section 9(c) of the CPSA and section 3(h) of the FHSA provide that the Commission shall publish a regulatory analysis containing:

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits or bear the costs

(2) a discussion of the reasons any standard or portion submitted to the Commission * * * was not published by the Commission as the proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed [to develop voluntary standards] * * * would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury * * *

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

15 U.S.C. 1262(h), 2058(c).

While the requirements under the FHSA and the CPSA are similar, Section 9 of the CPSA requires further that, for rules issued under the CPSA, the Commission shall make economic findings with respect to:

(A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule on the utility, cost, or availability of such products to meet such need; and

(D) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

15 U.S.C. 2058(f)(1).

The following discussion serves as the final regulatory analysis for the ban that is issued below. The discussion addresses requirements under both the FHSA and CPSA, except where noted.

Benefits

The benefits of the rule will accrue through a decrease in the deaths and injuries associated with lawn darts. While the rule was originally intended to address the risk of skull puncture injuries to children, all lawn darts are found to present this risk, and their elimination will also eliminate the punctures of other parts of the body, as well as the lacerations, fractures, and other injuries, that have been associated with lawn darts in the past. This also fulfills the will of Congress expressed in H.R. 5552, which is discussed in Section I of this notice.

An analysis by the Commission's Directorate for Epidemiology indicates that about 670 lawn-dart-related injuries have occurred annually over the last ten years. Economic studies indicate that the average cost of these injuries was about $7,500 per occurrence. The estimated total yearly cost of injuries associated with lawn darts is about $5 million.

The Commission is aware of 3 deaths associated with lawn darts over the period 1970–1987. If it is assumed that other variables, such as exposure and use characteristics, have remained constant and that the Commission is aware of all such deaths, the darts may present a 17 percent risk of one death in a given year. If a statistical valuation of $2 million for loss of life were assigned, lawn darts would have additional expected losses of about $300,000 per year.

Therefore, the estimated total yearly costs of death and injury associated with lawn darts are about $5.4 million. A reduction of these injuries and of the risk of death will make up the benefits accruing from the rule. Since the average useful life of a lawn dart is estimated to be ten years, and since it should take about 20 years to phase out the lawn darts that are currently in consumers' hands, a portion of the benefits of the rule will phase in each year, until, after about 20 years, the full benefit of the rule will accrue each year and will continue as long as the rule is in effect.

The benefits derived will be further affected by the choice of substitute activities. For example, if consumers chose a risk-free lawn game as a substitute, the reduction in injury would be completely realized after the existing stocks of elongated-tipped lawn darts in consumers' hands have become worn out, been misplaced, or otherwise passed from use. However, if consumers choose a substitute with a similar or higher risk of death or injury, the expected benefits of this action will be offset.

The benefits will be to purchasing consumers and their families and friends, but will accrue disproportionately to those 15 years old or younger, since over 75 percent of injuries and 100 percent of the deaths have occurred to this age group. Both the costs and benefits associated with a prohibition on the sale of elongated-tipped lawn darts are expected to be relatively small.

Costs

The costs of the rule to marketers of elongated-tipped lawn darts are the loss of future sales of a product with a demonstrated steady demand. Annual sales of these lawn darts are estimated at 1–1.5 million units, holding relatively stable in recent years. The typical retail price of a set of four lawn darts is about $5; thus, the total loss of sales will be about $5–7.5 million annually at the retail level. The intermediate and final markups of these products have been estimated at more than 50 percent of the retail price; thus, industry revenues from the sale of elongated-tipped lawn darts likely exceed $2.5 million annually. These revenues will be eliminated. However, the loss of these revenues could be largely recouped by sales of substitute products that will occupy the display and storage space previously allotted to lawn darts.

The vast majority of lawn darts sold in the U.S. are imported. However, the value of these imports is so small as to be negligible compared to total U.S. imports. There are no known U.S. exports of lawn darts. Thus, the rule is expected to have no effect on U.S. trade.

The one known domestic manufacturer will bear costs associated with the disposal of molds and production processes associated with the manufacture of these lawn darts as well as foregone profit on future sales. The manufacturer could produce lawn

darts for export, but this is considered unlikely since the firm does not now export lawn darts and is unlikely to develop overseas markets rapidly. If production machinery is adaptable to the manufacture of another product for which there is a demand, the cost effect may be minimized. If molds and machinery are scrapped, and no available substitute is produced to offset lost sales, the domestic manufacturer may incur significant economic costs. Also, this manufacturer has indicated that it will have raw materials for about 50,000 sets of lawn darts. If other uses for these materials cannot be found, the cost of acquiring these materials will not be recouped.

The impact of lost sales of lawn darts will be the loss of net profit associated with production and marketing of these products, less any profit derived from other products marketed in their stead.

The distributional effect on marketers will depend on their share of the market and on what share they may take of the sale of substitute products. Importers and retailers will similarly be affected by the extent of the relative volumes they sell of these goods.

Costs borne by consumers will take two forms. Consumers will be unable to purchase a game which has a proven popularity and will be induced to purchase alternate games to fill that demand. There are ready substitutes available, at approximately the same price; however, it is not clear whether these substitutes provide a similar level of utility (enjoyment) as the products they would replace. If consumers are compelled to purchase more costly games in order to receive the same utility as that provided by prohibited lawn darts, the rule may result in increased costs to consumers. Further, there may be a loss in consumer surplus associated with the unavailability of lawn darts if consumers were willing to pay more than they now pay at retail for the game in order to acquire it, thus indicating that they value the product in excess of the retail price. The extent of any lost consumer surplus is unknown, but is expected to be small.

The Commission has anecdotal information indicating that elderly persons may play lawn darts more than other typical adults do. The Commission has no information to indicate the extent to which handicapped persons may play lawn darts. Either of these groups, however, should be able to find suitable recreational substitutes for lawn darts.

The domestic manufacturer and certain marketers and retailers may be considered small businesses. The overall effect of the rule on the domestic manufacturer may be substantial, but other small businesses are not expected to experience significant adverse effects associated with the rule. This issue is discussed further in Section G of this notice.

It is likely that the marketing firms (wholesalers and private labelers) will initially bear the costs associated with the rule. The costs, including those of retrieval and disposal of unsaleable inventories and foregone profits, will begin on the effective date, which, as discussed below, is December 19, 1988, and applies to all products in the chain of distribution at that time.

Since the commission is making the rule banning elongated-tipped lawn darts effective 30 days after the publication of the final rule, and since the rule applies to all such lawn darts in the chain of distribution on the effective date, the potential for injuries from darts distributed before the effective date will be minimized. Also, the Commission believes that at this time of year there will be fewer sets of lawn darts at the retail level or elsewhere in the chain of distribution. Furthermore, the industry will have had the opportunity not to enter into contracts for new goods pending a Commission decision, thus further reducing any inventory in the chain of distribution and other economic consequences of the rule. Therefore, the Commission believes that costs caused by inventory being held on the effective date of the rule will not be substantial.

The Commission also does not expect that the cost to retailers due to foregone profits from the sale of lawn darts will be substantial, since other products could be promoted in the retail space vacated by the prohibited products.

Comparison of Costs and Benefits

As explained above, the quantifiable benefits of the rule are based on an estimated saving of the $5.4 million annual cost of deaths and injuries once lawn darts are no longer in use. This figure could be offset to the extent that consumers choose to engage in activities that involve risk during the time they would otherwise be playing lawn darts.

The quantifiable costs will consist basically of lost industry revenues, which are estimated at somewhat more than $2.5 million per year. However, the loss of these revenues can be largely recouped by the manufacture and sale of substitute items. Unquantifiable costs, discussed above, include consumers' loss of enjoyment of lawn darts.

After considering the costs and benefits of the rule, the Commission concludes that the benefits of the rule will bear a reasonable relationship to its costs.

Alternatives to the Rule

The Commission has determined that the rule is needed because industry actions of the types discussed in Section A to address the potential hazard presented by lawn darts would not be adequate. The five actions previously under consideration are: modifications to package labels, labeling one fin of each lawn dart, inclusion of a consumer warning against modification of the lawn darts, notice to retailers on the proper display of the games, and elimination of lawn dart sales in combination sets. The cost of implementing the five steps has been estimated at $150,000 the first year, decreasing to about $100,000 thereafter. If the five voluntary steps were to be about 2 percent effective in reducing injuries, the benefits derived through injury reduction would exceed the costs associated with compliance. However, the Commission believes that these voluntary steps may not be adhered to by all marketers and that, in any event, as discussed below, this approach would not be effective in adequately reducing the risk of injury presented by these products.

In order to determine whether attempts to ensure that lawn darts will be marketed for adults could be an effective way to deal with this risk, the Commission's staff analyzed information on consumer attitudes and behavior. The staff concluded that efforts to market lawn darts only for adult use may not prevent use by children, for the following reasons:

1. Selling lawn darts in stores other than toy stores, such as sporting goods departments, does not convey the message that lawn darts are for adult use only.

2. Consumers may recognize that lawn darts require motor and strategic skills similar to those required for other sports equipment designed for and/or used by children and, therefore, conclude that they are appropriate for children who have these skills.

3. Labeling lawn darts for adult use only may not convince parents that lawn darts are inappropriate for children. Parents may not consider the game particularly hazardous, especially in comparison to other products used by children.

4. It may be difficult for parents to prevent children from using lawn darts, as they are often used at large, casual gatherings with little or no supervision provided.

5. Parents sometimes have no knowledge that children are using lawn darts.

After considering this analysis of consumer attitudes and behaviors, the Commission concluded that efforts to market lawn darts for adult use only cannot be expected to preclude substantial use by children. Specifically, the marketing and labeling provisions in the current regulations, either by themselves or supplemented by the five actions requested of industry by CPSC, cannot be expected to accomplish the intended purpose. Furthermore, lawn darts do not require complex skills that preclude use by children. Therefore, the Commission believes children will continue to be attracted to and play with lawn darts, even if the product is marketed only as a game of skill for adults. Accordingly, the Commission concludes that no effort to develop a voluntary standard based on these types of requirements will adequately reduce the risk associated with lawn darts.

The Commission could also promulgate the voluntary actions as a mandatory rule. The expected costs and benefits of a mandatory rule would be similar to the cost of voluntary action, assuming 100 percent compliance. This action would have the additional effect of ensuring compliance by existing marketers as well as any future entrants. However, the Commission's concerns over effectiveness, described in the preceding paragraph, would remain.

As discussed previously in this notice, the Commission investigated a performance test to see if it could be determined that certain flexible-tipped lawn darts do not present an unreasonable risk of skull puncture injury. For the reasons given in Section E(1)(j) of this notice, the Commission concluded that there was insufficient information to determine that flexible-tipped darts do not also present a risk of skull puncture injuries.

Effective Date

The time allowed after promulgation for the final rule to go into effect, and the point in the chain of distribution to which the rule will be applied, affect the extent to which the industry will experience adverse economic effects from the rule. These adverse effects could be minimized by setting an effective date that facilitates an orderly elimination of affected products from the marketplace. Such an effective date would allow for exhausting wholesale and retail inventories to reduce the number of products that would require shipment to an alternate market or that would have to be discarded. Absent sufficient lead times, manufacturers estimate the cost of compliance with the rule may be substantial. However, as discussed below, the effect of lead time may depend on the time of the year the regulation goes into effect.

Even though a long lead time may reduce the cost of the rule for manufacturers, the longer it is before the rule becomes effective, the more lawn darts could be sold and the greater the number of injuries or deaths which otherwise would have been prevented by an earlier effective date. In view of the need to reduce the injuries and deaths associated with this product as soon as possible, the Commission concludes that the early effective date, 30 days after promulgation of the rule, is reasonably necessary to eliminate or reduce the unreasonable risk of skull puncture injury associated with lawn darts.

As noted above, this rule is effective December 19, 1988. Having the rule effective at this time of year could cause firms to bear significantly increased costs because of contractual obligations to manufacturers, unless marketers took some anticipatory action. Winter and early spring historically are the periods of seasonal reorder and inventory buildup for seasonal sales of lawn darts.

The Commission has considered the potential effects of other effective dates on the industry and on possible future injuries. If the rule were to affect only products manufactured (or imported) after the effective date, the most acute impact to marketers would occur if the effective date were during the winter and early spring period of reorder. However, in view of the advance notice to the industry of the probability that the Commission could take final action on the proposal in the fall of this year, it seems likely that marketers will have delayed placing such orders pending a Commission decision on the final rule.

If the rule were based on first entry into commerce (first sale), marketers would be most adversely affected during the period of inventory buildup, which is early spring to midsummer. Again, marketers may have curtailed or delayed inventory buildup in anticipation of the possibility that a final rule would apply to products in their inventory on the effective date.

Comments on the Proposal

A summary of the significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues, are included in section E of this notice.

G. Regulatory Flexibility Analysis

Introduction

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires that whenever an agency conducts a rulemaking proceeding under 5 U.S.C. 553 and is required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a preliminary regulatory flexibility analysis at the time of the proposal and a final regulatory flexibility analysis when the rule is issued. These analyses are required if the rule may have a significant impact on a substantial number of small businesses, small organizations, and small government jurisdictions. The agency is required to publish the preliminary regulatory flexibility analysis or a summary in the **Federal Register** and to make copies of the final regulatory flexibility analysis available to members of the public. The Commission's final regulatory analysis on the ban of lawn darts is given below. Copies may be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

The rule will affect all firms manufacturing, importing, or retailing lawn darts and may have a minor impact on some firms in the outdoor game industry that market lawn darts. Lawn darts represent about 5 percent of the total value of production of affected firms on the average, but individual firms indicate that these products represent as little as 1 percent and as much as 50 percent of gross revenue.

Statement of the Need for the Rule

Lawn darts intended for use by children are banned under the Federal Hazardous Substances Act, FHSA, at 16 CFR 1500.18(a)(4) and 1500.86(a)(3), but sale has been allowed under an exemption provision if certain warning labeling and retail display requirements are met. The Commission is concerned that, despite the regulation designed to discourage their use by children, lawn darts continue to be used by children. As a result, the products continue to present a risk of injury or death to children. Commission studies indicate that about 670 lawn-dart-related injuries were treated in hospital emergency rooms yearly from 1978 forward; three deaths have been reported over a 17-year period.

Objective of the Rule

The objective of the rule is to eliminate the risk of injury or death to children posed by skull punctures

caused by lawn darts. All lawn darts have been found to present a risk of skull puncture, so the rule will also serve to eliminate the other types of wounds, including other puncture wounds, caused by lawn darts. The rule prohibits the sale of lawn darts in combination sets with other outdoor lawn games, as well as in sets of darts only. This action also carries out the will of Congress as expressed in H.R. 5552, which is discussed in section I of this notice.

Comments on the Initial Regulatory Flexibility Analysis

The Commission received no comments that were identified specifically as being in response to the initial regulatory flexibility analysis. However, the Commission's responses to comments that address issues that were mentioned in the initial regulatory flexibility analysis are included in section E of this notice dealing with comments on the proposal.

Alternatives to the Rule

The Commission also could take other regulatory actions, including mandatory requirements for increased package labeling, a warning label on one fin of each lawn dart, notice to consumers warning against modification, informing retailers of their responsibilities under current law, and prohibiting the sale of lawn darts in combination sets. Such actions would notify adults of the danger presented by lawn darts if used by children, and would remove these games from combination sets since consumers otherwise may infer that all games in the sets are appropriate for general family use. This alternative would result in a minimal adverse effect in the year of introduction, with little cost effect thereafter. The Commission believes that this alternative will not be effective in reducing skull puncture injuries to children, given the easy access that children normally have to the game after it is purchased and the skill and judgment required to play the game safely. Similar effects would be expected if these actions were voluntarily adopted by the industry.

The Commission could also use a different effective date. The effects of different effective dates, and the reasons they were not adopted by the Commission, are discussed in section G of this notice.

The Commission also investigated whether a performance test could be developed to determine which lawn darts present a risk of skull puncture injuries, but, as explained in section E(1)(j), such a test is not believed to be feasible at this time.

The Commission has investigated ways of reducing the potential impact on small firms and concludes that no less burdensome alternative would adequately address the risk of injury to children.

H. Environmental Impact

Pursuant to The National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has prepared an assessment of the environmental impact associated with the rule issued below and of the proposed penetration criteria. The assessment addresses the potential environmental effects of the prohibition of the sale of lawn darts.

The rule will make preexisting packaging materials unusable for their intended purpose and, absent a residual use, would necessitate destruction of these materials. The Commission anticipates that less than 10 percent of preprinted packaging will remain after the imposition of the effective date; thus, less than about 150,000 boxes and printed instructions will be destroyed. The rule will also affect existing molds for fabricating lawn darts, because the existing molds likely will be destroyed. There is one existing domestic manufacturer of lawn darts subject to the rule. The number of individual molds involved is not believed to be substantial.

Since it appears that existing inventories of noncomplying lawn darts are low, the ban is not expected to cause a significant increase in discarded packaging material, other printed materials, or noncomplying sets.

In the industry, molds are periodically changed because of age or design modifications. Given the relatively small number of individual printing plates and molds affected, the Commission expects that the rule will cause no significant change in the disposal of used printing plate material or used molds.

The requirements of the rule are not expected to have a significant effect on the materials used in production or packaging of lawn darts or on the amount or types of materials discarded after the rule. Therefore, the Commission finds that the prohibition of hazardous lawn darts will cause no significant environmental effects.

I. H.R. 5552

Shortly before the Commission's scheduled meeting to consider whether to issue a final rule banning hazardous lawn darts, the Congress passed H.R. 5552, which provides:

> That notwithstanding any other provision of law, not later than 60 days after the date of enactment of this Act, the Consumer Product Safety Commission shall amend its regulations to revoke [the] exemption regarding lawn darts and other similar sharp-pointed toys contained in section 1500.86(a)(3) of title 16, Code of Federal Regulations, unless the Commission finds that such products do not have the potential for causing puncture wound injury.

On November 5, 1988, this legislation was signed by the President. The following discussion explains how this legislation relates to the rule the Commission is issuing in this notice.

It is important to note that the rule that the Commission is issuing fully complies with the congressional directive. Based on the risk of skull puncture, the Commission is banning all lawn darts; part of the mechanism for implementing that ban is to revoke the exemption at § 1500.86(a)(3), as provided in the legislation.

The legislation allows the Commission to exclude from the scope of the revocation of the current exemption those products that the Commission finds "do not have the potential for causing puncture wound injury." However, as noted above, the Commission has considered this issue and is not aware of any lawn dart that does not present a risk of skull puncture injuries, much less of puncture wounds in general.

The legislation appears to change the requirements for evidence to support the Commission's rulemaking for this particular product from (1) having to amass substantial evidence to show that the product is unreasonably dangerous in order to ban it to (2) having to have substantial evidence to show the product does not present a risk of puncture wound injury in order to exclude it from being banned. This has no effect on the rule being issued, because the Commission has concluded that all lawn darts present an unreasonable risk of skull puncture injuries. The Commission has examined the question of whether there are any lawn darts that appear not to have the potential for causing puncture wound injury and cannot find that there are any lawn darts that do not have this potential. This reversal of the normal burden of proof would have significance for persons who wish to request that the Commission exempt particular products from the scope of the ban. Such persons will have to provide evidence that the product to be exempted does not have the potential for causing puncture wound injury. This is a higher burden than that which would normally be

required to obtain an exemption; namely, that the ban is not reasonably necessary to address an unreasonable risk of injury.

Thus, the Commission's action fully complies with the provisions of H.R. 5552, and that bill provides additional legal support for the Commission's ban. Furthermore, the Commission's ban will supplement the bill's provisions, because the Commission is issuing a ban of lawn darts under the CPSA in addition to revoking the exemption to the current ban under the FHSA. The significance of this action arises from the fact that mechanical hazards of products can be regulated under the FHSA only if the product is a "toy or other article intended for use by children." FHSA 2(f)(1)(D), 15 U.S.C. 1261(f)(1)(D). Issuing a companion ban under the CPSA will remove any argument that might be made in response to an action for violating a ban of lawn darts under the FHSA alone that the darts are not toys or articles intended for use by children. While the Commission believes that the intent of H.R. 5552 is to remove all lawn darts from the market, the Commission's issuance of a ban under the CPSA, in addition to the existing ban under the FHSA, will provide additional assurance that the congressional intent will be achieved. By the same token, the expression of congressional intent in H.R. 5552 will provide additional support for the Commission's ban under the CPSA.

J. Conclusion

For the reasons given above, the Commission concludes that lawn darts present an unreasonable risk of skull puncture injuries to children from the mechanical characteristics of the darts. Further, it appears that there is no feasible consumer product safety standard that would adequately reduce this risk, and the rule issued below is the least burdensome alternative that will adequately reduce the risk. Also, this action fulfills the congressional directive embodied in H.R. 5552.

List of Subjects in 16 CFR Parts 1306 and 1500

Consumer protection, Recreation, Voluntary standards.

Therefore, under the authority of the Federal Hazardous Substances Act and the Consumer Product Safety Act, the Commission amends Title 16 of the Code of Federal Regulations, chapter II as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority citation for Part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1276.

§ 1500.86 [Removed and Reserved]

2. Section 1500.86(a)(3) is removed and reserved.

§ 1500.18 [Amended]

3. The parenthical phrase at the end of § 1500.18(a)(4) is removed.

A new Part 1306 is added to read as follows:

PART 1306—BAN OF HAZARDOUS LAWN DARTS

Sec.

1306.1 Scope and application.
1306.2 Purpose.
1306.3 Banned hazardous products.
1306.4 Findings.
1306.5 Effective date.

Authority: 15 U.S.C. 2058–2060.

§ 1306.1 Scope and application.

(a) In this Part 1306, the Commission declares lawn darts, described in § 1306.3, to be banned hazardous products.

(b) Lawn darts and similar products that are articles intended for use by children are not covered by this ban, but are banned under the Federal Hazardous Substances Act at 16 CFR 1500.18(a)(4).

§ 1306.2 Purpose.

The purpose of this rule is to prohibit the sale of lawn darts, which have been found to present an unreasonable risk of skull puncture injuries to children.

§ 1306.3 Banned hazardous products.

Any lawn dart is a banned hazardous product.

§ 1306.4 Findings.

(a) The Commission has found that lawn darts are being distributed in commerce and present an unreasonable risk of injury.

(b) *The degree and nature of the risk of injury.* (1) The risk that the Commission intends to address in this proceeding is that of puncture of the skulls of children caused by lawn darts being used by children. The potential for these devices to cause these types of injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves. This is because the tips do not appear sharp enough to present an obvious danger of puncture. The combined factors of weight, the narrow elongated shaft, the speed that the dart is traveling at the time of impact, and the thickness of the child's skull at the point of impact present the risk. The Commission has concluded that all lawn darts have the potential for skull puncture during reasonably foreseeable use or misuse.

(2) Because all lawn darts are being banned, the elimination of lawn darts that can cause skull puncture injuries will also eliminate the punctures of other parts of the body, as well as the lacerations, fractures, and other injuries that have been associated with lawn darts in the past. The Commission's staff estimates that about 670 injuries from lawn darts are treated in U.S. hospital emergency rooms per year. About 40 percent of these are puncture wounds. Approximately 57 percent of the injuries involved the head, face, eye, or ear. Approximately 4 percent of the injured victims were hospitalized (on the average, approximately 25 per year), including all of the injuries reported as fractures. Over 75 percent of the victims were under age 15; about 50 percent of the victims were under age 10. In addition, Commission records dating back to 1970 show that at least three children have been killed by injuries associated with lawn darts. These children were 4, 7, and 13 years old. In the 25 lawn dart injury reports for which information about the user of the lawn darts was available, the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

(c) *Products subject to this ban.* (1) Lawn darts are devices with elongated tips that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground tip first. Often, lawn darts are used in a game where the darts are thrown at a target or other feature on the ground. The types of lawn darts that have generally been available in the past and that have demonstrated their ability to cause skull puncture injuries typically have a metal or weighted plastic body, on the front of which is an elongated metal shaft about ¼ inch in diameter. These darts have a shaft on the rear of the body containing plastic fins. These darts are about a foot in length and weigh about one quarter to one half pound. These darts are intended to stick in the ground when thrown. Prior to this rule, annual sales of these lawn darts were estimated at 1–1.5 million units.

(2) The definition for lawn darts in this rule is not intended to include arrows or horseshoes, nor is it intended to apply to indoor dart games that use a vertically-placed target, such as "English darts" or "American darts."

(d) *The need of the public for lawn darts, and the effects of the rule on their utility, cost, and availability.* The need of the public for lawn darts is for recreational enjoyment. Substitute recreational enjoyment can be obtained from other products. Lawn darts will not be available through commercial channels after the effective date of the ban.

(e) *Alternatives.* (1) The Commission considered various labeling requirements and limitations on the marketing of lawn darts that would be intended to discourage the marketing of the product to children and the use of the product by children. The Commission concluded, however, that these types of requirements would not preclude substantial use of the product by children and would not reduce adequately the risk of injury addressed by this rule.

(2) The Commission also considered the possibility of performance requirements for lawn darts to determine which lawn darts present an unreasonable risk of injury of skull penetration to children, but such requirements were determined not to be feasible.

(f) *Conclusion.* The Commission finds:

(1) That this rule, including its effective date, is reasonably necessary to eliminate or adequately reduce the unreasonable risk of skull puncture wounds to children associated with lawn darts and will also eliminate or reduce the other injuries, including puncture wounds, that have been associated with this product.

(2) That issuance of the rule is in the public interest.

(3) That no feasible consumer product safety standard would adequately protect the public from the unreasonable risk associated with lawn darts.

(4) That the benefits expected from this rule bear a reasonable relationship to its costs.

(5) That the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

§ 1306.5 Effective date.

This rule is effective December 19, 1988 and applies to all lawn darts in the chain of distribution on or after that date.

Dated: November 14, 1988.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

List of Relevant Documents

[This list will not be published in the Code of Federal Regulations.]

Letter from David Snow to Sen. Albert Gore, May 21, 1987.

Letter from David Snow, June 4, 1987.

Letter from David Schmeltzer, AED/CAL, to various persons associated with the lawn dart industry to invite them to a meeting on July 17, 1987; July 2, 1987.

Memorandum from Schmeltzer, D., AED/CA, to Noble, D., Director, OPMB, "Lawn Darts," dated July 15, 1987, with attachments.

Attachment A—Proposed Ban of Lawn Darts, **Federal Register** Vol. 35, No. 223, November 17, 1970.

—Final rule on Lawn Dart Ban and Exemption, **Federal Register**, Vol. 35, No. 246, December 19, 1970.

Attachment B—Memorandum from Karels, T.R., ECSS, to Nelson, C., CARM, "Lawn Darts—PSA #2804", dated June 22, 1987.

Attachment C—Memorandum from Kennedy, J., EPHF, to Nelson, C., CARM, "PSA 2826; Lawn darts in Combination Game Sets," July 13, 1987.

Memorandum of July 17, 1987, meeting.

Letter from David Snow to Chairman Terrence Scanlon, July 18, 1987.

Memorandum to CPSC Regional Centers from Robert G. Poth, CARM, "Request to Notify Retail Stores of Noncomplying and Questionable Lawn Dart Sales Practices," July 22, 1987.

Letter from David Snow to K-Mart International Headquarters, July 26, 1987.

Letter from David Schmeltzer, AEDCA, to persons invited to the July 17, 1987, meeting who did not attend; July 27, 1987.

Letter from David Schmeltzer, AED/CAL, to persons who attended the July 17, 1987, meeting, July 28, 1987.

CPSC News Release: "Lawn Darts Can Cause Serious or Fatal Head Injuries and Death", Released July 30, 1987.

Memorandum from Ray, D., and Bennett, L., ECPA, to Tyrrell, E., OPMB, "Lawn Dart Accident Costs," August 4, 1987.

Letter to David Snow from David Schmeltzer, AED Compliance and Administrative Litigation, August 6, 1987.

Letter from Marcella V. Ridenour, Dept. of Physical Education, Temple University, to John Preston, CPSC, transmitting the following material on lawn darts:

1. Patent 2,976,042 (March 21, 1961).

2. *First National Bank of Dwight v. Regent Sports Corp.*, 7th Cir. No. 85–2834 (October 22, 1986).

3. *Trial*, "Lawn darts: a dangerous game," February 1985.

Memorandum from John Preston, ESMT, to Chris Nelson, CARM, "Response to PSA Request No. 2837", August 11, 1987.

Memorandum from Warren A. Mathers, EPHF, to Christine Nelson, CARM, "PSA 2846; Lawn Darts—Develop Labeling Criteria," August 13, 1987.

Letter from David Snow to David Schmeltzer, AED/CAL, August 18, 1987.

Memorandum from Koeser, R., to Tyrrell, E.A., OPMB, "Lawn Dart Options Package", August 19, 1987.

Materials for June–July Compliance Status Briefing, August 20, 1987.

Memorandum from Ulsamer, A.G., to Tyrrell, E.A., EX–PB, "HS Recommendations on Lawn Darts", August 20, 1987.

Memorandum from Tinsworth, D., and Crigler, W., EPHA, to Tyrrell, E., EX–PB, "Lawn Dart Injury Data", August 21, 1987.

Memorandum from John D. Preston, ESMT, to Elaine A. Tyrrell, EX–PB, "ES Comments on Options Package for Lawn Darts," August 21, 1987.

Memorandum from Poth, B., CARM, to Tyrrell, E., OPMB, "Lawn Darts Options Package", August 27, 1987.

Memorandum from Dale R. Ray, ECPA, to Elaine Tyrrell, OPMB, "Lawn Darts," August 27, 1987.

Memorandum from Walton, W.W., ES, to Tyrrell, E., EXPM, "Lawn Darts—Option Package", August 28, 1987.

Memorandum from Bob Poth, CARM, to Elaine Tyrrell, OPM, "Lawn Darts Option Package," September 1, 1987.

Briefing package from Elaine Tyrrell, Project Manager, to the Commission, September 10, 1987, with attachments:

TAB A—Memorandum from D. Schmeltzer, AED/CA, to Noble, D., OPMB, "Lawn Darts," with attachments, July 15, 1987.

TAB B—Memorandum from Tinsworth, D., EPHA, to Tyrrell, E., EX–PB, "Lawn Dart Injury Data," August 21, 1987.

TAB C—Memorandum from Ray, D., and Bennett, L., ECPA, to Tyrrell, E., OPMB, "Lawn Dart Accident Costs," August 4, 1987.

TAB D—CPSC News Release, July 30, 1987.

TAB E—Memorandum from Poth, B., CARM, to Tyrrell, E., OPMB, "Lawn Darts Options Package," August 28, 1987.

TAB F—Memorandum from Ulsamer, A., to Tyrrell, E., EX–PB, "HS Recommendations on Lawn Darts," August 20, 1987.

—Memorandum from Koeser, R., to Tyrrell, E., OPMB, "Lawn Dart Options Package," August 19, 1987.

—Memorandum from Ray, D., ECPA, to Tyrrell, E., OPMB, "Lawn Darts," August 27, 1987.

Letter to John R. Fanone, Esq., from Robert G. Poth, CARM, September 11, 1987.

Commission vote sheet on lawn darts options, September 16, 1987.

CPSC staff memorandum from Douglas L. Noble, Acting AED for Compliance and Administrative Litigation, to the Commission, "Lawn Darts Options Package—Update of CPSC's Investigation and Industry's Response to Requested Voluntary Actions," with restricted attachment, September 16, 1987.

Memorandum from Paul H. Rubin, AED for Economic Analysis, to the Commission, "Lawn Darts Options Package," September 16, 1987.

Materials for lawn dart update briefing, September 17, 1987.

Transcript, Commission meeting of September 17, 1987 (43 pp.).

Petition from David A. Snow asking that the CPSC ban lawn darts (Petition HP 87–3).

received in the Office of the Secretary, September 23, 1987.

Memorandum from Robert G. Poth, CARM, to Elaine A. Tyrrell, Project Manager, "Enforcement Resources Associated with Options 1 & 2 of Lawn Darts Options Package of September 10, 1987," September 23, 1987.

Memorandum to Ross Koeser, Acting AEDFO, from Elizabeth Hendricks, FO, "Lawn Dart Surveillance by States," September 25, 1987.

Memorandum from OPMB, "Follow-Up Information Requested at the Briefing of September 17, 1987, dated September 28, 1987, with attachments.

Memorandum from Robert G. Poth, CARM, to Elaine Tyrrell, Project Manager, "Enforcement Resources Associated with Options 1 & 2 of Lawn Darts Options Package of September 10, 1987," September 23, 1987.

Memorandum from Dale R. Ray, ECPA, to Elaine Tyrrell, OPMB, "Project Resource Estimate," September 21, 1987.

Memorandum from Andrew G. Ulsamer, AED/HS, to Elaine Tyrrell, Project Manager, "Health Sciences Resources for Lawn Dart Options," September 21, 1987.

Minutes of Commission meeting, October 1, 1987.

Transcription of portion of October 1, 1987, Commission meeting (1 p.).

Statement of Commissioner Anne Graham on lawn dart decision, October 2, 1987.

Letter from James V. Lacy, General Counsel, to David Snow, October 6, 1987.

Log of telephone conversation between Douglas Noble, CPSC, and Milton Bush of the Sporting Goods Manufacturing Association, October 6, 1987.

Memo record from John Preston, ESMT, to Pat Fairall, ESMT, "Voluntary Standard for Lawn Darts," October 8, 1987.

Log of a conversation between Nick Marchica and Elaine Tyrrell, CPSC, and Milton Bush, SGMA, October 13, 1987.

Transcript of Commission meeting of October 15, 1987.

Federal Register notice, "Lawn Darts; Advance Notice of Proposed Rulemaking; Request for Comments and Data," 52 FR 38935 (October 20, 1987).

Letter from the Secretary of the Commission to David Snow, advising of the status of Petition HP 87-3, November 3, 1987.

Log of a telephone conversation between James V. Lacy, General Counsel, and Milton Bush of the Sporting Goods Manufacturers Association (SGMA), November 4, 1987.

Letter dated November 5, 1987, to James V. Lacy, General Counsel, from Milton Bush, SGMA.

Letter from James V. Lacy, General Counsel to Milton M. Bush, SGMA, November 13, 1987.

Memorandum from John Preston, ESMT, to Elaine Tyrrell, EX-PB, "ES Resources/Tasks Concerning Rulemaking on Lawn Darts," undated.

Memorandum from D. Schmeltzer, AEDCA, to Elaine Tyrrell, OPMB, "Lawn Darts," February 5, 1988.

Briefing package from Elaine Tyrrell, OPMB, to the Commission, "Lawn Darts: Follow-Up to Advance Notice of Proposed Rulemaking (ANPR)," February 8, 1988, with attachments:

TAB A—Copy of ANPR.

TAB B—Memorandum from Tinsworth, D., EPHA, to Tyrrell, EXPM, "Lawn Dart Injuries," January 20, 1988.

TAB C—Memorandum from Deppa, S.W., and White, S., EPHF, to Tyrrell, E.A., EX-PB, "Evaluation of Lawn Dart Provision Effectiveness," January 29, 1988.

TAB D—Memorandum from Karels, T.R., ECSS, to Tyrrell, E., EX-P, "Lawn Darts," January 20, 1988.

TAB E—Memorandum from Nelson, C., CARM, to Tyrrell, E., OPMB, "Lawn Dart Compliance Survey," January 20, 1988.

TAB F—Log of meeting held by the Sporting Goods Manufacturers Association (SGMA) with industry representatives on lawn darts, December 10, 1987.

TAB G—Public comments in response to the ANPR:

A. Letter from Bush, M., Esq., Sporting Goods Manufacturers Association, December 17, 1987.

B. Comments of Consumer Federation of America, submitted by M. Fise, December 21, 1987.

C. Letter to the Editor from C. Mesneck, September 29, 1987.

D. Letter from Heslin, M., Connecticut Department of Consumer Protection, December 8, 1987.

E. Letter from Vultaggio, S., Regent Sports Corp., to D. Schmeltzer, CPSC, November 10, 1987.

F. Letter from G. Hostetler, November 16, 1987.

G. Letter from S. Coberly, November 3, 1987.

H. Letter from R. Lamontagne, November 16, 1987.

I. Letter from P. Spaeth, New York State Department of Law, to Doug Noble, CPSC, October 8, 1987.

J. Letter from C. Bouris, December 1, 1987.

K. Letter from R. Archer, Kent Sporting Goods Co., Inc., to D. Schmeltzer, CPSC, November 9, 1987.

TAB H—Memorandum from D. Shifflet, OIPA, to Noble, D., OPMB, "Lawn Dart Consumer Alert," February 2, 1988.

Additional comments on lawn darts:

Commenter	Date
Carl Meseck	Sept. 29, 1987.
N. Mease	Oct. 29, 1987.
H. Hatch	Oct. 5, 1987.
Rochester City Council	Jan. 20, 1988.
Consumer Federation of America	Mar. 7, 1988.
New York Department of Law	Mar. 24, 1988.

Commission vote sheet on lawn darts options, February 9, 1988.

Minutes of Commission meeting of March 2, 1988.

CPSC news release, "CPSC to Continue Its Formal Rulemaking Process on Lawn Darts," March 2, 1988.

Anne Graham, Commissioner, "Statement on Lawn Dart Decision," March 2, 1988.

Memorandum from Jack Kramer, EPHA, to Elaine Tyrrell, EXPM, "Lawn Darts: Head and Eye Injuries," March 30, 1988.

News from CPSC, "CPSC sues Sears to halt improper sale of lawn darts; Sears agrees to stop all sales," March 30, 1988.

Letter from D. Schmeltzer, AEDCA, to National Retail Merchants Association, April 19, 1988.

Commission ballot vote sheet, "Lawn Darts—Additional Option," April 21, 1988.

Memorandum from Douglas L. Noble, OPMB, to the Commission, "Lawn Darts," April 22, 1988, with attached memorandum from John Preston, ESMT, "A Test to Define the Scope of a Ban of Lawn Darts," April 21, 1988.

Report from Eric Allely, M.D., "An Approximation of the Probability of Penetration of the Human Skull by a Lawn Dart," with a cover letter, April 25, 1988.

Log of meeting of new ASTM task group for lawn darts on May 3, 1988, prepared by John Preston, ESMT.

Letter from Christine Nelson, CPSC/CARM, to the Managing Director, National Small Business Association, May 9, 1988.

Letter from Christine Nelson, CPSC/CARM, to the Managing Director, National Association of Catalog Merchandisers, May 13, 1988.

Memorandum from Purohit, V., and Cohn, M., HSHE, "The probability of penetration of a child's skull by a lawn dart," May 16, 1988.

Letter from Jan Kinney, SGMA to Wendy Dyer, ASTM, May 16, 1988.

Minutes of Commission meeting of May 17, 1988.

Memorandum from Jack Kramer, EPHA, to Elaine Tyrrell, OPMB, "Lawn Dart Injuries," May 24, 1988.

Minutes of Commission meeting of May 25, 1988.

Statement by Commissioner Anne Graham on decision to ban lawn darts, May 25, 1988.

Statement of Chairman Terrence Scanlon on lawn darts, May 25, 1988.

Opinion of Commissioner Carol G. Dawson regarding Commission action to ban lawn darts, May 25, 1988.

Memo record from Jack Kramer, EPHA, to Elaine Tyrrell, EXPM, "Lawn Darts," May 26, 1988.

Karels, T., "Preliminary Regulatory Analyses, Economic and Environmental Assessments—Proposed Mandatory Rules on Lawn Darts," June 1988.

Karels, T., "Initial Regulatory Flexibility Analysis of a Mandatory Rule for Lawn Darts," June 1988.

Letter from David Snow to Commissioner Carol Dawson, June 9, 1988.

Memorandum from Christine Nelson, CPSC/CARM, to Charles Demoret, CPSC/FOWR, "Lawn Darts Sold at Pay 'N Save," June 17, 1988.

Letter from David Schmeltzer, CPSC/AEDCA, to Stephen R. Vultaggio, Regent Sports Corporation, June 17, 1988.

Letter from David Schmeltzer, CPSC/AEDCA, to Mary Ellen R. Fise, Consumer Federation of America, June 22, 1988.

Memorandum from Christine Nelson, CARM to Carl Blechschmidt, OPMB, "Proposed Ban of Lawn Darts," June 28, 1988.

Memorandum from Christine Nelson, CPSC/CARM, to Don Dovel, CPSC/FOCR, "Superior Marketing Lawn Darts," June 29, 1988.

Vote sheet from Harleigh Ewell, OGC, to the Commission "Draft Federal Register

Notice to Propose a Prohibition of The Sale of Lawn Darts," June 30, 1988.

Memorandum to the Commission from Carl Blechschmidt, Program Manager, "Notice of Proposed Rulemaking for Lawn Darts," June 30, 1988, with attachments:

Tab A—Memorandum from Karels, T.R., ECSS, to Blechschmidt, C.W., EXPM, "Initial Regulatory Flexibility Analysis: Lawn Darts," June 28, 1988.—Memorandum from Karels, T.R., ECSS, to Blechschmidt, C.W., EXPM, "Preliminary Regulatory Analyses and Assessments—Lawn Darts," June 28, 1988.

Tab B—Draft **Federal Register** notice.

Minutes of Commission meeting, July 13, 1988.

News from CPSC, "CPSC obtains consent decree to halt improper sale of lawn darts," July 18, 1988.

Memorandum CPSC Office of General Counsel, "**Federal Register** Notice for Lawn Darts Proposal," July 19, 1988.

Letter from CPSC Chairman Terrence Scanlon to David Snow, July 21, 1988.

Federal Register notice, "Lawn Darts; Notice of Proposed Rulemaking," 53 FR 28657 (July 29, 1988).

Transcript of oral presentation of comments, August 9, 1988.

Official comments on the notice of proposed rulemaking, #CC1–88–1 through CC1–88–13.

Memorandum from Cohn, M.S., HSHE, to Thome, D., EXPM, "Comparison of metal and plastic tipped lawn darts using the ballistic based model," October 17, 1988.

Memorandum from David W. Thome, Program Manager, to the Commission, "Final Rule for Lawn Darts," October 18, 1988.

Tab A—Draft **Federal Register** notice, "Ban of Hazardous Lawn Darts."

Tab B—(1) Memorandum from John Preston, CPSC/ES, to David W. Thome, CPSC/OPMB, "ES Response to Comments on Lawn Darts NPR," September 14, 1988.

(2) Memorandum from Murray S. Cohn, Ph.D., CPSC/HS, to David W. Thome, CPSC/OPMB, "Comparison of Metal and Plastic Tipped Lawn Darts Using the Ballistic-Based Model," October 17, 1988.

Vote Sheet, "Draft **Federal Register** Notice to Prohibit The Sale Of Hazardous Lawn Darts," October 18, 1988.

Memorandum from John Preston, CPSC/ESME, to CPSC's Acting Executive Director, "Test to Define Scope of Ban of Lawn Darts," October 25, 1988.

Memorandum from David W. Thome, CPSC/OPMB, to the Commission, "Lawn Darts: Revised Staff Recommendation," October 25, 1988.

Log of telephone conversation between Harleigh Ewell, CPSC/OGC, and the Office of Advocacy of SBA, October 27, 1988.

Memorandum from Charles Sitzlar and Mary Logan, Tennessee Dept. of Agriculture, Division of Quality and Standards, to George Rutherford, CPSC/EPHA, on Lawn Dart Investigation 881027CAA2035, October 27, 1988.

Tape recording of Commission meeting of October 28, 1988.

Statement by Anne Graham, Commissioner, on Final Vote to Ban Lawn Darts, October 28, 1988.

News from CPSC, "CPSC Votes Final Ban on Lawn Darts," October 28, 1988.

Memorandum from Harleigh Ewell, CPSC/OGC, "Revised **Federal Register** Notice to Ban Lawn Darts," Nov. 4, 1988.

Memorandum from Harleigh Ewell, CPSC/OGC, "Signing of H.R. 5552 (Lawn Darts)," November 7, 1988.

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