3-22-89
Vol. 54 No. 54
Pages 11693-11934

federal register

Wednesday
March 22, 1989

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, Philadelphia, PA, and Salt Lake City, UT, see announcement on the inside cover of this issue.

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

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

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

PHILADELPHIA, PA

WHEN: March 30, at 1:00 p.m.
WHERE: 841 Chestnut Street, Room 705, Philadelphia, Pa
RESERVATIONS: Call the Philadelphia Federal Information Center
Philadelphia: **215–597–1709**
New Jersey: **609–396–4400**

WASHINGTON, DC

WHEN: April 11, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

SALT LAKE CITY, UT

WHEN: April 12, at 9:00 a.m.
WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
RESERVATIONS: Call the Utah Department of Administrative Services, 801–538–3010

Contents

Federal Register
Vol. 54, No. 54
Wednesday, March 22, 1989

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 54, No. 54
Wednesday, March 22, 1989

DEPARTMENT OF AGRICULTURE

7 CFR Part 760

Dairy Indemnity Payment Programs

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of the final rule is to adopt without change the interim rule published at 53 FR 44001 which amended the Dairy Indemnity Payment Program (DIPP) regulations to extend the operation of the program through September 30, 1990.

EFFECTIVE DATE: March 22, 1989.

FOR FURTHER INFORMATION CONTACT: Susan Schneider, Agricultural Program Specialist, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), Washington, DC 20013; Telephone (202) 447–5171.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 760) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control No. 0560–0116.

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program to which this rule applies are: Title: Dairy Indemnity Payments; Number: 10.053, as found in the Catalog of Federal Domestic Assistance.

Administrator, ASCS, certifies that this action will not increase federal paperwork burden for industry, small business, and other persons and will not have a significant economic impact on a substantial number of small entities.

Therefore the action is exempt from the provisions of the Regulatory Flexibility Act. Additionally, the Regulatory Flexibility Act is not applicable to this rule since the ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The DIPP was originally authorized by section 331 of the Economic Opportunity Act of 1964 (78 Stat. 508). The statutory authority for the program has been extended several times, most recently by section 152 of the Food Security Act of 1985 (99 Stat. 1337) (the 1985 Act) which authorized the program to be carried out through September 30, 1990. The objective of the program is to indemnify dairy producers who, through no fault of their own, suffer income losses with respect to milk or milk products which are removed from commercial markets because such milk or milk products contain certain harmful residues. In addition, dairy farmers can be indemnified for income losses with respect to milk which is required to be removed from commercial markets due to residues of chemicals or toxic substances of contamination by nuclear radiation or fallout.

The 1985 Act made no substantive changes with respect to the DIPP but merely extended the time period for conducting the program through September 30, 1990. The regulations governing the program (7 CFR Part 760) previously authorized the operation of the program through January 31, 1988. Accordingly, it is necessary to amend § 760.2 of these regulations to make them effective through September 30, 1990.

Comments Received

An interim rule was published in the **Federal Register** on November 1, 1988, (53 FR 44001) which amended the regulations at 7 CFR Part 760 to continue conducting the program through September 30, 1990. A comment period of 60 days was provided. No comments were received.

List of Subjects in 7 CFR Part 760

Dairy producers, Indemnity payments, Pesticides and Pests.

Final Rule

PART 760—DAIRY INDEMNITY PAYMENT PROGRAMS

Accordingly, pursuant to the authority contained in 7 U.S.C. 450 j, h, and l, the interim rule amending 7 CFR Part 760 which was published at 53 FR 44001 on November 1, 1988, is adopted as a final rule without change.

Signed at Washington, DC, on March 16, 1989.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–6783 Filed 3–21–89; 8:45 am]
BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–109–AD; Amdt. 39–6167]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires ultrasonic inspection of certain engine strut diagonal brace lugs for cracks, and replacement, if necessary. This amendment is prompted by reports of cracked diagonal braces. This condition,

if not corrected, could lead to overloading the remaining strut attach points and possible structural damage.

DATES: Effective May 3, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires ultrasonic inspection of certain engine strut diagonal brace lugs for cracks, and replacement, if necessary, was published in the **Federal Register** on September 28, 1988 (53 FR 22325). The comment period for the proposal closed on November 18, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The Air Transport Association (ATA) of America was concerned that its members can not accomplish the inspection as it is now described because of technical problems, such as the ultrasonic meter called out in the procedure provides erroneous readings and interference exists with adjacent fasteners. Further, the ATA requested that the FAA defer adoption of this proposed rule until such time as the revised inspection procedures have been successfully tried by the operators. The FAA has discussed ATA's concern with the manufacturer. The manufacturer has developed revised inspection procedures. These procedures have been successfully tested, and have been incorporated into the Non-Destructive Testing (NDT) Manual.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 634 Model 747 series airplanes in the worldwide fleet. It is estimated that 204 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $73,440.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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 adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-54-2126, dated June 16, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the engine strut diagonal brace lugs, accomplish the following:

A. Prior to the accumulation of 10,000 landings or 8 years in service, whichever occurs first; or within the next 3 months after the effective date of this AD, whichever occurs later, ultrasonically inspect engine strut diagonal brace lugs for cracks, in accordance with Boeing Service Bulletin 747-54-2126, dated June 16, 1988.

B. If cracking is found, prior to further flight, replace the diagonal brace with a new or overhauled diagonal brace incorporating the terminating action described by paragraph D., below, in accordance with Boeing Service Bulletin 747-54-2126, dated June 16, 1988.

C. If no cracking is found, repeat the inspection required by paragraph A., above, at intervals not to exceed 1,000 landings.

D. Terminating action for the inspections required by paragraphs A. and C., above, consists of removing existing bushings, oversizing bores to remove corrosion, installing high-interference fit bushings with wet sealant, and fillet sealing bushing flanges, in accordance with Boeing Service Bulletin 747-54-2126, dated June 16, 1988.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, 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 Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 3, 1989.

Issued in Seattle, Washington, on March 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-6641 Filed 3-21-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-CE-04-AD; Amendment 39-6161]

Airworthiness Directives: British Aerospace (BAe) PLC Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain BAe Jetstream Model 3101 airplanes which requires inspection and, where necessary, modification of the engine fire protection system. It has been reported that improper wiring in the engine fire protection system has resulted in the failure of the system to operate when an engine fire was experienced. These actions are necessary to assure correct wiring of the fire protection system that, if not corrected, would result in the loss of the airplane due to a fire that may otherwise be extinguished.

EFFECTIVE DATE: April 20, 1989. Comments for inclusion in the Rules Docket must be received on or before May 22, 1989.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 26-A-JA881142, Rev 1, dated January 10, 1989, applicable to this AD may be obtained from British Aerospace Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington DC 20041; Telephone (703) 435-9100. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. John P. Dow Sr., Project Support Section-Foreign, ACE-109, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: This action adopts a new AD, applicable to certain BAe Jetstream Model 3101 airplanes which requires inspection and, where necessary, modification of the engine fire protection system. It has been reported that on a Model 3101 airplane following an aborted engine start, smoke and flame were observed coming from an engine and in the resultant crew actions, one of the two fire extinguishers in the engine area failed to operate. Subsequent investigation revealed that the positive and negative electrical connections to the fire bottle cartridge were reversed and the cable identification was undistinguishable. The design of this system incorporates fire extinguisher cartridges with equal sized positive and negative terminals and associated equal sized cable terminals. Failure to be able to extinguish such a fire could result in an uncontrolled fire and loss of the airplane. As a result, BAe has issued ASB Jetstream 26-A-JA881142, Rev 1, dated January 10, 1989, which specifies inspection and, where necessary, modification of the engine fire protection system. The Civil Airworthiness Authority (CAA), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in United Kingdom (UK), has classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under CAA-UK registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of BAe ASB Jetstream 26-A-JA881142, Rev 1, dated January 10, 1989, and the mandatory classification of this ASB by the CAA-UK. Based on the foregoing, the FAA has determined that the condition addressed by BAe ASB Jetstream 26-A-JA881142, Rev 1, dated January 10, 1989, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Therefore, an AD is being issued requiring inspection and, where necessary, modification of the engine fire protection system to assure the correct operation of the engine fire protection system on BAe Jetstream Model 3101 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements effecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified herein. All communications received on or before the closing date for comments will be considered. This rule may be amended in the light of comments received.

Comments that provide a factual basis in supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this AD will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may

be obtained by contacting the Rules Docket under the caption **"ADDRESSES"** at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR 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 adding the following new AD:

British Aerospace (BAe) PLC: Applies to Model 3101 Jetstream (serial numbers 601 through 619) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of the airplane due to failure of the engine fire protection system, accomplish the following:

(a) Inspect the right and left hand engine fire extinguisher systems to ensure that existing electrical connections to the fire extinguisher cartridges are correct in accordance with PART A—INSPECTION, under the Section 2 ACCOMPLISHMENT INSTRUCTIONS of British Aerospace Civil Aircraft Division (BAe) Alert Service Bulletin (ASB) Jetstream 26–A–JA881142, Rev 1, dated January 10, 1989. Prior to further flight, modify electrical connections that are not correct in accordance with Part B of the above referenced ASB.

(b) Inspect the engine fire extinguisher cartridges in accordance with PART B—REPLACEMENT OF TERMINAL TAGS, under the ACCOMPLISHMENT INSTRUCTIONS of BAe ASB Jetstream 26–A–JA881142, Rev 1, dated January 10, 1989. Prior to further flight, replace any Part Number 13085–5 fire extinguisher cartridges with Part Number 30903819 cartridges.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Brussels Aircraft Certification Staff, FAA, AEU–100, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington DC 20041; Telephone (703) 435–9100; or British Aerospace PLC, Aircraft Group, Scottish Division, Prestwick Airport, Ayrshire KA9 2RW U.K. (0292) 79888; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 8, 1989.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6642 Filed 3–21–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the regulations to set forth the current organizational structure of the agency and to update addresses for offices in several regions.

EFFECTIVE DATE: March 22, 1989.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: The regulations are being amended in this final rule in 21 CFR 5.100 and 5.115 to reflect the current organizational structure of the agency and to update addresses.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*, 3701 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63, 141 *et seq.*, 301–392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O 11490, 11921, 12591.

2. Section 5.100 is revised to read as follows:

§ 5.100 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

Office of the Commissioner [1]

Office of Regulatory Affairs.
Office of Management and Operations.
Office of Health Affairs.
Office of Science.
Office of Planning and Evaluation.
Office of Legislative Affairs.
Office of Public Affairs.
Office of Consumer Affairs.

Center for Drug Evaluation and Research [1]

Office of Management

Division of Management and Budget.
Division of Information Systems Design.
Division of Drug Information Resources.
Medical Library.

Office of Epidemiology and Biostatistics

Division of Epidemiology and Surveillance.
Division of Biometrics.

Office of Compliance

Division of Drug Labeling Compliance.
Division of Drug Quality Evaluation.
Division of Manufacturing and Product Quality.
Division of Scientific Investigations.
Division of Regulatory Affairs.

Office of Drug Evaluation I

Division of Cardio-Renal Drug Products.
Division of Neuropharmacological Drug Products.
Division of Oncology and Radiopharmaceutical Drug Products.
Division of Surgical-Dental Drug Products.
Division of Gastrointestinal and Coagulation Drug Products.

Office of Drug Evaluation II

Division of Metabolism and Endocrine Drug Products.
Division of Anti-Infective Drug Products.
Division of Anti-Viral Drug Products.

Office of Drug Standards

Division of OTC Drug Evaluation.
Division of Generic Drugs.
Division of Bioequivalence.
Division of Biopharmaceutics.
Division of Drug Advertising and Labeling.

Office of Research Resources

Division of Research and Testing.
Division of Drug Analysis.

[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

Center for Biologics Evaluation and Research [2]

Office of Management

Office of Compliance

Office of Biological Product Review

Division of Product Quality Control.
Division of Biological Investigational New Drugs.
Division of Product Certification.

Office of Biologics Research

Division of Bacterial Products.
Division of Blood and Blood Products.
Division of Virology.
Division of Biochemistry and Biophysics.
Division of Cytokine Biology.

Center for Food Safety and Applied Nutrition [3]

Office of Management

Division of Program Operations.
Division of Administrative Operations.
Division of Information Resources Management.

Office of Compliance

Division of Regulatory Guidance.
Division of Food and Color Additives.
Division of Cooperative Programs.

Office of Toxicological Sciences

Division of Toxicological Studies.
Division of Toxicological Review and Evaluation.
Division of Pathology.
Division of Mathematics.

Office of Physical Sciences

Division of Contaminants Chemistry.
Division of Colors and Cosmetics.
Division of Food Chemistry and Technology.

Office of Nutrition and Food Sciences

Division of Consumer Studies.
Division of Nutrition.
Division of Microbiology.

Center for Devices and Radiological Health [1]

Office of Management Services

Division of Planning, Evaluation, and Information Services.
Division of Resource Management.

Office of Information Systems

Division of Computer Services.
Division of Information Resources.

Office of Health Physics

Office of Health Affairs [4]

Office of Standards and Regulations

Office of Compliance and Surveillance [4]

Division of Management Information.
Division of Compliance Programs.
Division of Compliance Operations.
Division of Product Surveillance.
Division of Standards Enforcement.

Office of Device Evaluation [4]

Division of Cardiovascular Devices.
Division of Gastroenterology/Urology and General Use Devices.
Division of Anesthesiology, Neurology, and Radiology Devices.
Division of Obstetrics/Gynecology, Ear, Nose, Throat, and Dental Devices.
Division of Surgical and Rehabilitation Devices.
Division of Clinical Laboratory Devices.
Division of Ophthalmic Devices.

Office of Science and Technology

Division of Mechanics and Materials Science.
Division of Life Sciences.
Division of Physical Sciences.
Division of Biometric Sciences.
Division of Electronics and Computer Sciences.

Office of Training and Assistance

Division of Consumer Affairs.
Division of Small Manufacturers Assistance.
Division of Intergovernmental Programs.
Division of Technical Development.
Division of Professional Practices.
Division of Training Support.

Center for Veterinary Medicine [1]

Office of Management

Office of New Animal Drug Evaluation

Division of Biometrics, Informatics, and Environmental Sciences.
Division of Chemistry.
Division of Therapeutic Drugs for Food Animals.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Toxicology.
Division of Production Drugs.

Office of Surveillance and Compliance

Division of Compliance.
Division of Surveillance.
Division of Animal Feeds.
Division of Voluntary Compliance and Hearings Development.

Office of Science

Division of Veterinary Medical Research.

National Center for Toxicological Research [5]

Office of Management

Division of Management Services.
Division of Resource Information Management Systems.
Division of Facilities Engineering and Maintenance.

Office of Research

Division of Reproductive and Developmental Toxicology.
Division of Genetic Toxicology.
Division of Biochemical Toxicology.
Division of Comparative Toxicology.
Division of Human Risk Assessment.

Office of Research Services

Division of Microbiology.
Division of Animal Husbandry.
Division of Chemistry.

3. Section 5.115 is revised to read as follows:

§ 5.115 Field structure.

Northeast Region

Regional Field Office: 830 Third Ave., Brooklyn, NY 11232.
New York District Office: 850 Third Ave., Brooklyn, NY 11232.
Boston District Office: One Montvale Ave., Stoneham, MA 02180.
Buffalo District Office: 599 Delaware Ave., Buffalo, NY 14202.

Mid-Atlantic Region

Regional Field Office: 900 U.S. Customhouse, Second and Chestnut Sts., Philadelphia, PA 19106.
Philadelphia District Office: 900 U.S. Customhouse, Second and Chestnut Sts., Philadelphia, PA 19106.
Baltimore District Office: 900 Madison Ave., Baltimore, MD 21201.
Cincinnati District Office: 1141 Central Parkway, Cincinnati, OH 45202–1097.
Newark District Office: 61 Main St., West Orange, NJ 07052.

Southeast Region

Regional Field Office: 60 Eighth St. NE., Atlanta, GA 30309.
Atlanta District Office: 60 Eighth St. NE., Atlanta, GA 30309.
Nashville District Office: 297 Plus Park Blvd., Nashville, TN 37217.
New Orleans District Office: 4298 Elysian Fields, New Orleans, LA 70122.
Orlando District Office: 7200 Lake Ellenor Dr., Suite 120, Orlando, FL 32809.
San Juan District Office: Fernandez Juncos Ave., Stop 8½, Puerta de Tierra, San Juan, PR. Mail to: P.O. Box 5719, Puerta de Tierra Station, San Juan, PR 00906–5719.

Midwest Region

Regional Field Office: 20 North Michigan Ave., Chicago, IL 60602.
Chicago District Office: 1222 PO Bldg., 433 West Van Buren St., Chicago, IL 60607.
Detroit District Office: 1560 East Jefferson, Detroit, MI 48207.
Minneapolis District Office: 240 Hennepin Ave., Minneapolis, MN 55401.

Southwest Region

Regional Field Office: 3032 Bryan St., Dallas, TX 75204.
Dallas District Office: 3032 Bryan St., Dallas, TX 75204.
Denver District Office: Bldg. 20, Denver Federal Center, Sixth and Kipling Sts., P.O. Box 25087, Denver, CO 80225–0087.
Kansas City District Office: 1009 Cherry St., Kansas City, MO 64106.
St. Louis Branch: 808 North Collins Alley, St. Louis, MO 63102.

[2] Mailing address: 8800 Rockville Pike, Bldg. 29, Bethesda, MD 20814.

[3] Mailing address: 200 C St. SW., Washington, DC 20204.

[4] Mailing address: 8757 Georgia Ave., Silver Spring, MD 20910.

[5] Mailing address: Jefferson, AR 72079.

Pacific Region

Regional Field Office: Rm. 568 Federal Office Bldg., 50 U.N. Plaza, San Francisco, CA 94102.
San Francisco District Office: Rm. 526, Federal Office Bldg., 50 U.N. Plaza, San Francisco, CA 94102.
Los Angeles District Office: 1521 West Pico Blvd., Los Angeles, CA 90015–2486.
Seattle District Office: 22201 23d Dr. SE., Bothell, WA 98021–4421.

Dated: March 16, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–6649 Filed 3–21–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 14

Advisory Committees; Antiviral Drugs Advisory Committee; Establishment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment by the Secretary of Health and Human Services of the Antiviral Drugs Advisory Committee in FDA's Center for Drug Evaluation and Research. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice requesting nominations for membership on this committee. This document adds to the agency's list of standing advisory committees.

DATES: Effective March 22, 1989. Authority for the committee being established will end on February 15, 1991, unless the Secretary of Health and Human Services formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 and 21 CFR 14.40(b)), FDA is announcing the establishment by the Secretary of Health and Human Services of the Antiviral Drugs Advisory Committee.

The committee will review and evaluate available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections, and make appropriate recommendations to the Secretary, the Assistant Secretary for Health, and the Commissioner of Food and Drugs. The committee will also provide critical review of agency-sponsored intramural and extramural research programs in support of FDA's regulatory functions.

Because this is a technical amendment to Part 14, the Commissioner of Food and Drugs finds under 21 CFR 10.40(c), (d), and (e) that notice and public procedure in § 10.40(b) are unnecessary and contrary to the public interest.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR Part 14 continues to read as follows:

Authority: 5 U.S.C. 5332 note; 15 U.S.C. 1451 *et seq.*; 21 U.S.C. 41 *et seq.*; 141 *et seq.*, 321–371, 467f(b), 679(b), 821, 1031 *et seq.*; 42 U.S.C. 201 *et seq.*; 257a; 21 CFR 5.10.

2. Section 14.100 is amended by adding new paragraph (c)(3) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(c) * * *

(3) *Antiviral Drugs Advisory Committee.*

(i) *Date established:* February 15, 1989.

(ii) *Function:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

* * * * *

Dated: March 16, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–6727 Filed 3–21–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 546

Animal Drugs, Feeds, and Related Products; Tetracycline Hydrochloride Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the portion of the regulations reflecting the approval of a new animal drug application (NADA) held by Solvay Veterinary, Inc., for tetracycline hydrochloride capsules for use in dogs. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 65–064 for tetracycline hydrochloride capsules held by Solvay Veterinary, Inc., P.O. Box 7348, Princeton, NJ 08540. The product is labeled for use in dogs for treatment of bacterial gastroenteritis due to *E. coli*, and urinary tract infections due to *Staphylococcus spp.* and *E. coli*. The sponsor has requested the withdrawal of approval of the NADA.

Upon withdrawal of a new animal drug application, the agency is required by section 512(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(i)) to remove the regulations that reflect the approval. This document amends 21 CFR 546.180a(c)(5)(i)(*c*) by removing Solvay Veterinary, Inc., as a sponsor for tetracycline hydrochloride capsules.

List of Subjects in 21 CFR Part 546

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 546 is amended as follows:

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 546 continues to read as follows:

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

§ 546.180a [Amended]

2. Section 546.80a *Tetracycline hydrochloride capsules* is amended in paragraph (c)(5)(i)(*c*) by removing ", 000693, and, 053501" and adding in its place "and 000693".

Dated: March 15, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-6648 Filed 3-21-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8246]

Taxpayer Assistance Orders

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the issuance of taxpayer assistance orders. The Technical and Miscellaneous Revenue Act of 1988 added new section 7811 to the Internal Revenue Code of 1986. The regulations provide the public with guidance concerning the procedures for filing an application for a taxpayer assistance order, the terms of such order, and the effect of such an order on applicable statutes of limitations. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

EFFECTIVE DATE: The regulations take effect as of February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph W. Clark, 202-566-4754 (not a toll-free call).

SUPPLEMENTARY INFORMATION: This document contains temporary regulations for the Procedure and Administration Regulations (26 CFR Part 301) under section 7811 of the Internal Revenue Code. The regulations reflect the addition of section 7811 by section 6230 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647).

Explanation of Provisions

As added by section 6230 of the Technical and Miscellaneous Revenue Act of 1988, section 7811 provides that upon application filed by a taxpayer or the taxpayer's duly authorized representative, the Ombudsman's office may issue a taxpayer assistance order if it determines that the taxpayer is suffering or is about to suffer a "significant hardship" as a result of the manner in which the Service is administering the internal revenue laws. To the extent authorized by Internal Revenue Service delegation orders, the authority exercisable by the Ombudsman under section 7811 may be exercised by Problem Resolution Officers in regional and district offices and at service and compliance centers. The terms of the taxpayer assistance order may require the Service to release levied property, or to stop any action or refrain from taking any action with respect to the taxpayer regarding collection, the immediate assessment of deficiencies in bankruptcies and receiverships, the issuance of administrative summonses and the discovery of liability, or any other similar provision in the Internal Revenue Code that is specifically described by the Ombudsman in the order. The taxpayer assistance order may be modified or rescinded only by the Ombudsman, a district director, a service center director, a compliance center director, a regional director of appeals, or the superior of those officials. All applicable statutes of limitations with respect to an action that is subject to a taxpayer assistance order are suspended from the date the taxpayer's written application is received by the Omudsman until the later of the date of the Ombudsman's decision regarding the application or the date on which review of the Ombudsman's decision to issue a taxpayer assistance order is completed by an official authorized by section 7811(c) to modify or rescind the order. The statute of limitations will also be suspended for any additional period specified by the Ombudsman in the taxpayer assistance order. The Ombudsman may issue a taxpayer assistance order without an application by the taxpayer. However, the statute of limitations is not suspended if the Ombudsman issues a taxpayer assistance order in the absence of a written application by the taxpayer.

The regulations specify the time, form and manner of an application seeking a taxpayer assistance order. The application must be made on a signed Internal Revenue Service Form 911 or in a signed written statement which identifies the taxpayer and, where possible, the Service personnel and office involved, and which describes the Service's action and the significant hardship which has occurred or will occur as a result of the manner in which the internal revenue laws are being administered.

The regulations define "significant hardship" by reference to the effect that the manner in which the internal revenue laws are being administered has or will have on the taxpayer as well as the resultant perception of the Service's action or proposed action by taxpayers in general. The term is defined as more than an inconvenience to the taxpayer or a financial hardship, as such, but rather as a hardship from which the resultant disruption caused or to be caused to the taxpayer by the Internal Revenue Service's action or proposed action is such that it would offend the sense of fairness of taxpayers in general were they aware of all of the surrounding facts and circumstances.

The regulations specify that upon a determination of significant hardship, the Ombudsman may issue a taxpayer assistance order which requires the Service to release levied property to the extent that the Internal Revenue Service may release such property. In the absence of an overpayment there is, for example, no authority under which the Internal Revenue Service may release sums which have been credited against the taxpayer's liability and deposited into the Treasury of the United States. On the other hand, since bank levies issued after July 1, 1989 are subject to a 21-day freeze before they are honored under section 6332(c), and in most cases more than 21 days will expire before seized tangible property is sold, the taxpayer should have sufficient time after notice of the levy and before funds are credited against an account to apply for a taxpayer assistance order where a significant hardship arises as a result of such levy. The Service solicits comments as to whether there are instances where the inability to release funds that are not an overpayment will create significant hardship, and if so, whether the statute or regulations require amendment.

The regulations also specify that upon a determination of significant hardship, the Ombudsman issue a taxpayer assistance order which requires the Service to stop or refrain from taking further action against a taxpayer under specific chapters of the Internal Revenue Code, or under other sections of the Internal Revenue Code under which the Service is taking or is about to take administrative action against the taxpayer that causes or would cause a significant hardship.

Under the regulations, a taxpayer assistance order may not require an affirmative action on the part of the Service with the exception of a release of levy. A taxpayer assistance order generally may not be issued to enjoin a criminal tax investigation because it is not the type of Service activity described in section 7811 nor one to which that section was meant to apply. Further, the regulations provide that the activities of the Office of Chief Counsel

(with the exception of Appeals) generally may not be the subject of a taxpayer assistance order since neither the statute nor the legislative history appear to cover cases referred to Counsel (for example, no officials of the Office of Chief Counsel, other than a regional director of appeals, is listed as one who may modify or rescind a Taxpayer Assistance Order), and taxpayers are otherwise protected by judicial remedies, including the possible award of attorney's fees. On the other hand, because the legislative history of section 7811 does not indicate that application of the section to Chief Counsel activities was specifically addressed by Congress, the Service welcomes comments on whether and to what extent acts of the Office of Chief Counsel should be subject to a taxpayer assistance order. The regulations further provide that a taxpayer assistance order may not be issued to contest the merits of any tax liability, and is not to be used as a substitute for or in addition to established administrative or judicial review procedures.

Finally, the regulations specify that all applicable statutes of limitations which are affected by any action which is the subject of a taxpayer assistance order are suspended from the date the Ombudsman receives the application until the later of the date on which the Ombudsman makes a determination with respect to the application or the date on which review of the Ombudsman's decision to issue a taxpayer assistance order is completed by an official authorized by section 7811(c) to modify or rescind the order. The statute of limitations will also be suspended for any additional period specified by the Ombudsman in the taxpayer assistance order. However, if the Ombudsman issues a taxpayer assistance order in the absence of written application by the taxpayer, the statute of limitations is not suspended. Unless modified or rescinded, the taxpayer assistance order is binding on the Service.

Nothing in section 7811 or these regulations is to be construed as restricting or otherwise limiting taxpayer assistance practices of Problem Resolution Offices pursuant to existing delegation orders and Internal Revenue Manual provisions.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Joseph W. Clark of the General Litigation Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Disclosure of information, Employment taxes, Estate tax, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, Title 26, Part 301 of the Code of Federal Regulations is amended as follows:

Paragraph 1. The authority for Part 301 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 301.7811–1T is added to read as follows:

§ 301.7811–1T Authority to issue taxpayer assistance orders (temporary).

(a) *Authority to issue*—(1) *In general.* When an application is filed by the taxpayer or the taxpayer's duly authorized representative, in the form, manner and time specified in paragraph (b) of this section, the Ombudsman may issue a taxpayer assistance order if, in the determination of the Ombudsman, the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service.

(2) *Issuance without an application.* The Ombudsman may issue a taxpayer assistance order in the absence of an application under section 7811(a).

(3) *Duly authorized taxpayer's representative.* A "duly authorized taxpayer's representative" is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(4) *Significant hardship*—(i) *Determination required.* A determination of significant hardship is required to be made by the Ombudsman prior to the issuance of a taxpayer assistance order.

(ii) *Term defined.* The term "significant hardship" means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the internal revenue laws are being administered by the Internal Revenue Service. The term means more than an inconvenience to the taxpayer. Further, the term means more than financial hardship alone. Instead, even where financial hardship is involved, a finding of "significant hardship" will depend on an examination of the action taken, or to be taken, by the Internal Revenue Service which produces or would produce the financial hardship. The action or proposed action must be such that it would offend the sense of fairness of taxpayers in general were they aware of all the surrounding facts and circumstances.

(b) *Application for taxpayer assistance order.*—(1) *Form.* The application for a taxpayer assistance order shall be made on a Form 911 (Application for Taxpayer Assistance Order to Relieve Hardship) available from any local office of the Internal Revenue Service or in a written statement which shall contain the following information:

(i) Name, social security number (or the employer identification number), and current mailing address of the taxpayer submitting the application.

(ii) Kind of tax (individual, corporate, etc.) and tax period or periods involved.

(iii) Description of the Internal Revenue Service action or proposed action which is causing or is about to cause a significant hardship to the taxpayer and, if known, the Internal Revenue Service office and personnel involved.

(iv) Description of the specific hardship caused or about to be caused and the kind of relief requested.

(v) Signature of the taxpayer/applicant or duly authorized representative.

(2) *Manner.* An application for a taxpayer assistance order shall be filed with the Internal Revenue Service Problem Resolution Office in the district where the taxpayer resides. Overseas applicants having a APO or FPO address shall file applications with the Internal Revenue Service, Problem Resolution Office where the return was filed. All other overseas applicants shall file applications with the Internal Revenue Service, Problem Resolution Office, Assistant Commissioner (International), Washington, DC. Where appropriate, these Problem Resolution

offices may refer an application for a taxpayer assistance order to another office of the Internal Revenue Service.

(3) *Time.* An application for a taxpayer assistance order shall be submitted within a reasonable time after the taxpayer becomes aware of the significant hardship or the potential significant hardship.

(c) *Contents of Taxpayer Assistance Orders*—(1) *Terms of order.* Upon determination that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered, the Ombudsman may issue a taxpayer assistance order requiring the Internal Revenue Service to—

(i) Release levied property (to the extent that the Internal Revenue Service may by law release such property), or

(ii) Stop any action or refrain from taking further action against a taxpayer pursuant to:

(A) Chapter 64 (relating to collection),

(B) Chapter 70, subchapter B (relating to bankruptcy and receiverships),

(C) Chapter 78 (relating to discovery of liability and enforcement of title), or

(D) Any other section of the Internal Revenue Code under which the Internal Revenue Service is taking or is about to take administrative action against the taxpayer that causes or will cause a significant hardship.

(2) *Binding effect.* A taxpayer assistance order is binding on the Internal Revenue Service unless reversed by an official authorized to modify or rescind such an order as provided in paragraph (d) of this section.

(3) *Scope.* The terms of a taxpayer assistance order may require the release from levy of property of the taxpayer to the extent that the Internal Revenue Service may by law release such property. In the absence of an overpayment there is, for example, no authority under which the Internal Revenue Service may release sums which have been credited against the taxpayer's liability and deposited into the Treasury of the United States. A taxpayer assistance order may generally not be issued with respect to the investigation of any criminal tax violation and generally may not be issued to enjoin an act of the Office of Chief Counsel (with the exception of Appeals). A taxpayer assistance order may not be issued to contest the merits of any tax liability nor is a taxpayer assistance order intended to be a substitute for or an addition to any established administrative or judicial review procedure.

(d) *Authority to modify or rescind.* A taxpayer assistance order may be modified or rescinded only by the Ombudsman, a district director, a service center director, a compliance center director, a regional director of appeals, or the superiors of such officials. A modification or rescission by one of these designated officials may be elevated by the Ombudsman to the superior of such official.

(e) *Suspension of statutes of limitations.*—(1) *In general.* The running of the applicable period of limitations for any action which is the subject of a taxpayer assistance order shall be suspended for the period beginning on the date the Ombudsman receives an application for a taxpayer assistance order in the form, manner, and time specified in paragraph (b) of this section and ending on the date on which the Ombudsman makes a determination with respect to the application, and for any additional period specified by the Ombudsman in an order issued pursuant to a taxpayer's application. For the purpose of computing the period suspended, all calendar days except the date of receipt of the application shall be included.

(2) *Date of determination.* The "date on which the Ombudsman makes a determination with respect to the application" is the date on which the taxpayer's request for a taxpayer assistance order is denied, or agreement is reached with the involved function of the Service, or a taxpayer assistance order is issued (except that when the taxpayer assistance order is reviewed by an official who may modify or rescind the taxpayer assistance order as provided in paragraph (d) of this section, the determination date is the date on which such review is completed).

(3) *Periods suspended.* The periods of limitations which are suspended under section 7811(d) are those which apply to the taxable periods to which the application for a taxpayer assistance order relate or the taxable periods specifically indicated in the terms of a taxpayer assistance order.

Example (1). On August 31, 1989, the Internal Revenue Service levies on funds in the taxpayer's checking account. On September 1, 1989 (at which time 7 months remain before the period of limitations on collection after assessment will expire on April 1, 1990) the Ombudsman receives the taxpayer's written application for a taxpayer assistance order. Subsequently, on September 6, 1989, the Ombudsman determines that the levy has caused a significant hardship and the Internal Revenue Service function which served the levy agrees to release the levy. The levy is released. As a result of the application and the decision by the Ombudsman and the involved function of the Service resolving the hardship, the statute of limitations on collection after assessment is suspended from the date the Ombudsman received the application, September 1, 1989, until the date on which the decision was made to release the levy, September 6, 1989. Therefore, the statute of limitations on collection after assessment will not expire until after April 6, 1990, which is 7 months plus 5 days after the date on which the application for a taxpayer assistance order was received by the Ombudsman.

Example (2). The facts are the same as in example (1) except that the Internal Revenue Service function which served the levy does not agree to release the levy, and the Ombudsman, having made a determination that the levy is causing a significant hardship, issues a taxpayer assistance order on September 6, 1989, in which the levy is ordered to be released and specifies that the statute of limitations on collection after assessment is suspended for an additional 15 days. The period of limitations on collection after assessment will therefore not expire until after April 21, 1990, which is 7 months and 20 days (5 days plus 15 days) after the application for the taxpayer assistance order was received by the Ombudsman.

Example (3). The facts are the same as in example (2) except that the Ombudsman does not specifically suspend the statute of limitations on collection after assessment for an additional number of days in the taxpayer assistance order, but rather the function seeks modification or rescission of the taxpayer assistance order and the appropriate official charged with that responsibility completes his consideration of the assistance order on September 8, 1989. The period of limitations on collection after assessment will therefore not expire until after April 8, 1990, which is 7 months and 7 days after the application for the taxpayer assistance order was received by the Ombudsman.

(4) *Absence of a written application.* The statute of limitations is not suspended in cases where the Ombudsman issues an order in the absence of a written application for relief by the taxpayer or the taxpayer's duly authorized representative.

(f) *Independent action of Ombudsman.* The Ombudsman may take any of the actions described in section 7811(b) in the absence of an application by the taxpayer.

(g) *Ombudsman.* The term "Ombudsman" includes any designee of the Ombudsman, such as Problem Resolution Officers in Internal Revenue Service regional and district offices and at Internal Revenue Service compliance and service centers.

(h) *Effective date.* These regulations are effective as of February 8, 1989.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: February 24, 1989.

Dennis Earl Ross,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-6751 Filed 3-21-89; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19

[T.D. ATF-283]

Labels for Export Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending regulation 27 CFR 19.395 to give the Director, ATF, conditional authority to waive the requirement that the word "diluted" appear on labels of bottled distilled spirits products intended for exportation. The word "diluted" is ordinarily required (as part of the designation or "kind of spirits") when any spirits products are bottled in this country at less than the minimum alcohol content under the applicable standard of identity (27 CFR 5.22). This change extends only to bottled spirits for export and has no effect on the labeling of distilled spirits products intended for distribution in the United States. ATF has modified the language of the regulatory change which was proposed in Notice Number 669 in order to prevent unintended effects.

EFFECTIVE DATE: April 21, 1989.

FOR FURTHER INFORMATION CONTACT: Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7531).

SUPPLEMENTARY INFORMATION:

Background

Petition

ATF received a petition, dated April 12, 1988, filed by Delta Consultants, Inc., Washington, DC. The petition requested that ATF revise the provisions of § 19.395 so that the Director, ATF, would have the authority to waive all information normally required to appear on labels for export spirits. In elaborating upon this request, the petitioner made it clear that the objective of the request was to make it possible for bottled distilled spirits products to be exported without bearing the word "diluted" on the label, where the word "diluted" would otherwise be required by ATF Ruling 75-32, 1975 ATF C.B. 31.

Notices Numbered 669 and 673

ATF published Notice Number 669 in the **Federal Register** (August 24, 1988; 53 FR 32255), proposing to amend § 19.395 by providing the Director, ATF, with the authority to waive the requirements pertaining to "kind of spirits", provided that the resulting labels for bottled spirits to be exported would be in conformity with the rules and regulations of the country to which the product is being shipped. With the publication of Notice No. 673 (53 FR 40908, October 19, 1988), the comment period to Notice 669 was extended to November 23, 1988.

Analysis of Comments

In response to Notices numbered 669 and 673, the Bureau received fifteen comments. One comment (from the Distilled Spirits Council of the United States, Inc. (DISCUS)) simply requested an extension of the original comment period which had been established with the publication of Notice No. 669. As a result of that request, the comment period established by Notice No. 669 was extended until November 23, 1988, with the publication of Notice No. 673. Eight of the fourteen comments supported the proposal made in the notice. These were submitted by—Jim Beam Brands, Co., Heaven Hill Distilleries, Inc., The Governor of Kentucky, Brown-Forman Corporation, The Kentucky Distillers Association, Hiram Walker & Sons Inc., Delta Consultants, Inc., and Heublein, Inc.

The remaining six comments opposed the proposal. These were submitted by Ms. Diane Brooks of San Francisco, California; The Delegation of the Commission of the European Communities (EEC); the Kentucky Distillers Association on behalf of Boulevard Distillers and Importers, Inc.; Austin Nichols & Co. Inc.; Boulevard Distillers and Importers Inc.; and Joseph E. Seagram & Sons, Inc.

Ms. Brooks objected to the proposal on the grounds that allowing the deletion of the word "diluted" from labels of distilled spirits bottled for export would be misleading to persons who purchase American distilled products abroad and would, therefore, reflect negatively on the quality of American exports. She further expressed the view that the proposal would have an adverse effect on America's reputation for producing high-quality products and that the shortcuts in labeling that are being proposed would perpetrate fraud on the importing countries around the world.

ATF emphasizes that the amended regulation only authorizes the deletion of the word "diluted" from labels when such deletion is permitted by the laws and regulations of the receiving country. Further, any possible misleading aspects of the proposal would be overcome by the retention of the requirement that the label reflect a statement of alcohol content. Any possible negative impact that the proposal would have with respect to America's reputation for producing high-quality products appears unlikely since American spirits are currently being exported in bulk and bottled overseas at proofs below those now required under the standards of identity found in § 5.22, without any such impact.

The Delegation of the Commission of the European Communities (EEC) opposed the proposed regulation stating that: (1) The consumer would be misled by not finding in the product purchased the alcoholic strength desired; (2) without the benefit of the word "diluted" on the label, the consumer would be guided almost entirely by price, leading to a distorted competition in favor of the "diluted" products; and (3) implementation of the proposal would adversely affect the sales of EEC spirituous beverages.

We agree that alcohol content is an important consumer consideration; however, simple deletion of the word "diluted" would not affect the requirement for a statement of alcohol content to appear on the label. The major point ATF makes with respect to the EEC comments is that no country would be required to receive bottled spirits labeled contrary to that country's law or regulations. Thus, the EEC and the separate countries making up the EEC can, under the proposal, control the labeling and composition of products entering such countries.

The Kentucky Distillers Association wrote to ATF to make it a matter of record that Boulevard Distillers and Importers, Inc., which the Association had previously reported in favor of the proposal, later decided to oppose the proposal.

The opposition comments of Austin Nichols & Co. Inc., and Boulevard Distillers and Importers, Inc., are grouped together since Austin Nichols fully concurred with Boulevard's comments.

The general theme underlying all of Boulevard's comments is that bourbon whisky is the only distinctive distilled spirits product produced in the United

States. The company states that the right to use the distinctive term "bourbon" is a unique American asset, and nothing should be done to diminish its value.

Boulevard expressed concern that the proposed regulatory change was too broad, pointing out that the designation of a product is affected by many factors, such as the type of cooperage, minimum age, the addition of blenders in excess of limits, etc. Boulevard stated that if the Director were to waive some or all of these factors, products would not be designated in a manner consistent with consumer understanding.

The comments submitted by Brown-Forman and Hiram Walker & Sons also state that they believe no adverse impact to the identity of bourbon will arise as a result of the proposed regulation, so long as the Director could only waive the term "diluted", where it would be otherwise required to appear by ATF Ruling 75–32.

We agree with these comments. Accordingly, we reconsidered the proposed change and decided to address more directly the petitioner's concern. Limiting the scope of the proposed regulatory change also serves to address the concern that Boulevard expressed about the proposed language being too broad. We have modified the language of the regulatory change to make it clear that the only element of "kind" the Director may waive is the requirement that the word "diluted" appear on the labels of bottled distilled spirits for export.

Boulevard also suggested that the rules of the country of bottling, not the country to which the product is exported, should be the basis for allowing the waiver. Finally, Boulevard stated that bourbon whisky should be exported only in bottles or other consumer size containers (prohibit the exportation of bulk bourbon whisky). Compliance with the rules of the consignee country is necessary for spirits to be admitted into such country. Bourbon whisky may be exported in bulk and the overseas bottling and labeling of the product cannot, without an international agreement, be controlled by the United States.

Joseph E. Seagram & Sons, Inc. commented that the issue of removing the word "diluted" from labels on products for export should be expanded to include consideration of underproof spirits products which are intended for consumption in the United States.

We remind all interested parties that Notice No. 669 specifically limits application of the proposal to bottled spirits for export. Moreover, the issue of domestic underproofed spirits was recently considered in a series of notices (see Notice No. 613, 51 FR 44924, 1986) dealing with the labeling of spirits bottled for domestic use below the prescribed minimum alcohol content. This resulted in a decision to continue to require that the term "diluted" appear on the label of bottled spirits, where such term is applicable under ATF Ruling 75–32. Seagram also raised a question concerning the labeling of spirits products where those products have an alcohol content below the minimum required in § 5.22, but where the low alcohol was achieved by means other than dilution with water.

ATF makes no distinction in this Treasury Decision, between dilution with water, or the use of any other means, of bottling spirits products below the minimum alcohol content specified in § 5.22.

Three questions were raised for consideration in the notice of proposed rulemaking, to focus any respondent's attention to any possible adverse consequences which might arise from the approval of the proposed regulatory change.

1. Will lower proof products bearing a standard of identity which requires higher proof if bottled for domestic consumption adequately represent American products overseas? Most respondents felt that lower proof products (even though they might bear a standard of identity which requires higher proof if bottled for domestic consumption) would adequately represent American products overseas. They pointed out that bulk export shipments of American spirits products are now being made and that such spirits are being bottled overseas at varying proofs. Overseas consumers are therefore accustomed to purchasing American products at varying proofs and are aware of what to look for.

2. Will American statements of age and origin be as meaningful as they are now? Most respondents did not feel that the change in regulation would have an impact on the statement of age and origin certificates that ATF issues in order to satisfy the requirement of consignee countries. In our view, ATF would still be able to execute such documents on the basis that the exported products were made and designated in accordance with United States laws and regulations.

3. Will the maintenance of two bottling proof standards (one domestic, one foreign) damage or adversely influence the distinctive product status of bourbon abroad? A majority of the respondents felt that implementation of the proposed regulatory change would not damage or adversely influence the distinctive product status of bourbon abroad. They pointed out that at the present time American distilled spirits products are being exported in bulk and bottled overseas with an alcohol content lower than the minimum required under American law and regulations. Further, these bottled products are being sold in foreign markets without the word "diluted" appearing on the label.

In conclusion, most respondents stated that the amended regulatory change would not have an adverse effect on the issues raised in the questions.

Therefore, based on the above considerations, the Bureau is adopting the proposed regulatory change, modified to make it clear that the only aspect of "kind of spirits" which can be waived is the requirement that "diluted" appear on the label of spirits bottled below minimum alcohol content.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this regulation is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) 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.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The authors of this document are Robert Petrangelo and Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Lists of Subjects in 27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Authority and Issuance

PART 19—DISTILLED SPIRITS PLANTS

Part 19—Distilled Spirits Plants is amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 19 continues to read as follows:

Authority: 19 U.S.C. 81, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5145, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271–5173, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.395 [Amended]

Par. 2. § 19.395 is amended by adding the following sentence at the end of the undesignated paragraph following paragraph (d) to read as follows:

* * * * *

(d) * * *

* * * With respect to kind of spirits, the Director may waive the designation required by 27 CFR 5.22, only to the extent that the label need not bear the word "diluted" on distilled spirits bottled below the minimum bottling proof, provided this is in accordance with the rules of the countries to which such product is to be exported.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended 1394, as amended (26 U.S.C. 5201 and 5301)).

Signed: January 31, 1989.

Stephen E. Higgins,

Director.

Signed: February 13, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89–6690 Filed 3–21–89; 8:45 am]

BILLING CODE 4810–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300196; FRL–3541–2]

Pesticide Tolerances for Clofentezine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerance for residues of the insecticide clofentezine in or on various commodities. This regulation to establish maximum permissible levels for residues of the chemical was requested pursuant to a petition by Nor-Am Chemical Co.

DATE: Written comments, identified by the document control number [OPP–300196], must be received on or before April 21, 1989.

ADDRESSES: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Dennis H. Edwards, Jr., Product Manager (12), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

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

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 15, 1989 (54 FR 6958), which announced that the Nor Am Chemical Company, P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, had submitted a pesticide petition (7F3511) proposing to establish tolerances for residues of the pesticide chemical clofentezine ([3,6,-bis(2-chlorophenyl)-1,2,3,5-tetrazine]) in or on pears at 0.5 ppm, apples at 0.5 ppm, milk at 0.05 ppm, meat and meat by-products of cattle 0.05 at ppm, and liver of cattle at 0.5 ppm.

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

The petition was subsequently amended by deleting the tolerance proposal for apples, apple pomace, cattle meat, cattle liver, cattle meat by-product, and milk.

The toxicological data considered in support of the tolerance include a 1-year dog feeding study with no-observed-effect-level (NOEL) of 50 ppm (1.25 mg/kg/day); a mouse oncogenicity study which was negative at the doses tested, 50 ppm (7.5 mg/kg/day), 500 ppm (75 mg/kg/day), and 5,000 ppm (750 mg/kg/day); a three-generation rat reproduction study with a NOEL of 400 ppm (20 mg/kg/day) (highest dose tested (HDT)); a rat teratology study which was negative at 3,200 mg/kg/day (HDT) and had a fetotoxic NOEL of 3,200 mg/kg/day; a rabbit teratology study which was negative at 3,000 mg/kg/day (HDT) and also has a NOEL of 1,000 mg/kg/day for fetoxicity; and a 2-year rat feeding/oncogenicity study which showed a statistically significant increase in thyroid follicular cell tumors in male rats at 400 ppm (20 mg/kg/day) (HDT). Gene mutation, chromosomal aberrations, and direct DNA damage tests were negative for mutagenic effects.

The registrant (Nor-Am) also submitted additional thyroid studies intended to show that there was an indirect mechanism for the follicular cell tumor associated with clofentezine's liver toxicity. The Agency has reviewed the data in accordance with criteria outlined in a draft document entitled, "Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Considerations," prepared by the Technical Panel of the Agency's Risk Assessment Forum (December 15, 1987). The Agency believes that additional data are needed to more completely define the mechanism of clofentezine's thyroid tumor induction in terms of the criteria listed in the above document. Based on the rat study, the Agency has classified clofentezine as a possible human carcinogen (Group C). The qualitative designation "C" refers to

EPA's weight-of-the-evidence classification, which in this case shows clofentezine to be a "possible human carcinogen." This classification is based on the Agency's "Guidelines for Carcinogenic Risk Assessment," published in the **Federal Register** of September 24, 1986 (51 FR 33992). The Agency believes a quantitative risk assessment based on the thyroid tumor incidence is not appropriate for the following reasons:

1. The increased tumor incidence was marginally increased above the control incidence only at the highest dose tested (20 mg/kg/day) in the chronic feeding study.

2. The increased incidence was observed only in male rats.

3. The thyroid tumor incidence in the chronic feeding study's highest dose group (20 percent) was slightly greater than the historical range provided by limited data (7.5 to 15 percent) from two studies.

4. The additional thyroid function studies suggest the possibility of an indirect mechanism for follicular cell tumor induction that may be associated with clofentezine's liver toxicity.

5. The mouse was negative for oncogenic effects at all dose levels, i.e., 50, 500, 5,000 ppm (equivalent to 7.5, 75, 750 mg/kg/day, respectively).

6. There are no close structural analogs with oncogenic concerns identified.

7. Clofentezine is not mutagenic in several acceptable studies.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) also reviewed the weight-of-the-evidence consideration and classification of the oncogenic potential of clofentezine. Their review included the additional thyroid studies submitted by Nor-Am. The SAP concluded that thyroid tumor in male rats did not provide evidence of human risk for carcinogenicity and that clofentezine belongs in category "D" (not classifiable as to human carcinogenicity). This interpretation was primarily based on data showing an increase in the thyroid-stimulating hormone (TSH), and the subsequent responses in the thyroid (hyperplasia and neoplasia), and a decrease in the half-life of thyroid hormones (tri-iodothyroxine (T_3) and tetra-iodothyroxine (T_4)). It has been established that the above sequence leads to thyroid tumors in rats, and exposure to agents that cause this sequence in rats has not resulted in increased hyperplasia and thyroid tumors in humans. Therefore, SAP concluded that there is inadequate data for suggesting human carcinogenicity. The SAP also stated that the data were not adequate for a quantitative risk assessment.

As previously stated, the Agency believes that additional data are needed to more completely define the mechanism of clofentezine's thyroid tumor induction and that the available data are not sufficient to change the classification of clofentezine from Category "C" to Category "D." However, the Agency does agree with the SAP that a quantitative risk assessment is not appropriate.

Based on the 1-year dog feeding study with a NOEL of 1.25 mg/kg/day and using a safety factor of 100, the acceptable daily intake (ADI) for humans is 0.013 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) from this tolerance utilizes 0.47 percent of the ADI.

The nature of the residue is understood. An adequate analytical method, high-performance liquid chromatography (HPLC), is available for enforcement purposes.

Because of the long lead-time from establishing this tolerance to publication of the enforcement methodology in the *Pesticide Analytical Manual,* Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: By mail:

William Grosse, Chief, Information Service Branch (TS-767C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Based on the above considerations, the Agency has concluded that the tolerance would protect the public health. Therefore, the tolerance is proposed as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300196]. All written comments filed in response to this petition will be available in the Information Services Section at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: March 9, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. New § 180.446 is added, to read as follows:

§ 180.446 Clofentezine; tolerances for residues.

Tolerances are established as follows for residues of the insecticide clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5,-tetrazine) in or on the following raw agricultural commodity:

Commodity	Parts per million
Pears	0.5

[FR Doc. 89-6708 Filed 3-21-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6F3402/R1013; FRL-3540-9]

Pesticide Tolerance for 3,5-Dimethyl-4-(Methylthio)Phenyl Methylcarbamate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; extension of tolerance.

SUMMARY: This rule extends tolerances for the residues of the insecticide/bird repellent, 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate in or on blueberries and cherries. This regulation to extend the maximum permissible level for residues of the chemical in or on these commodities was requested by the Mobay Corp.

EFFECTIVE DATE: March 22, 1989.

ADDRESS: Written objections, identified by the document control number [PP

6F3402/R1013], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail:
William H. Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Rm. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2600.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of June 18, 1986 (51 FR 22077), which announced its decision to establish the reduced tolerance for residues of the pesticide on blueberries and cherries for a period extending to March 31, 1989, to cover residues existing from the conditional registration of the chemical. Based on additional information received in response to the June 18, 1986 notice, EPA extended the conditional registration of 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate for use on blueberries and cherries to September 15, 1988. Therefore, the Agency is extending the tolerances for the pesticide on these commodities for the period extending to September 30, 1990, to cover residues existing on blueberries and cherries treated during the period of time the conditional registration was in effect.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data submitted in support of the regulation were discussed in the **Federal Register** document of June 18, 1986 (51 FR 22077).

Based on the 2-year dog feeding study with a NOEL of 5.0 ppm (0.125 mg/kg/day) and using a safety factor of 10, the acceptable daily intake (ADI) for humans is 0.0125 mg/kg of body weight per day and the maximum permissible intake (MPI) is 0.7500 mg/day for a 60-kg human.

The current established tolerances for residues of 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate comprise a theoretical maximum residue contribution (TMRC) of 0.2542 mg/day (1.5 kg) and utilize 33.89 percent of the ADI. As a result of this regulation, the TMRC will be 0.2145 mg/day (1.5 kg) and 28.61 percent of the ADI will be utilized.

No feed items are involved; therefore, it is expected that no secondary residues in meat, milk, poultry, and eggs will result from the use of the pesticide on blueberries and cherries.

The metabolism of the insecticide is adequately understood, and an analytical method, gas liquid chromatography with a flame photometric detector, is available for enforcement purposes. New methodology is forthcoming. If method trials are successful, the new methodology will replace the current methodology in PAM. Because the Agency currently has concerns over this new methodology, the Agency is limiting the period of time that the reduced tolerance is to be in effect. When the Agency receives the additional data needed to verify the analytical method which is due March 1, 1989, it will reassess the tolerance for blueberries and cherries and, if appropriate, will establish a permanent tolerance for these commodities. There are no regulatory actions pending against continued registration of the insecticide/bird repellent, and no other considerations are involved in extending the tolerance.

The pesticide is considered useful for the purpose for which the tolerances are sought. Based on the above information and data, the Agency concludes that extending the tolerances will protect the public health. Therefore, as set forth below, the tolerances are extended to September 30, 1990, to cover residues existing on blueberries and cherries treated during the period of time the conditional registration for these commodities was in effect.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: March 9, 1989.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.320 [Amended]

2. In § 180.320 *3,5-dimethyl-4-(methylthio)phenyl methylcarbamate; tolerances for residues*, by amending paragraph (b) by revising the interim tolerance expiration date, which currently reads "March 31, 1989," to read "September 30, 1990."

[FR Doc. 89–6709 Filed 3–21–89; 8:45 am]
BILLING CODE 6560–50–M

---

40 CFR Part 261

[SW–FRL–3540–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified wastes to be generated by Roanoke Electric Steel Corporation, Roanoke, Virginia. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: March 22, 1989.

ADDRESS: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Room M2427, Washington,

DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–89–RSEF–FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475–9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of This Rulemaking

Roanoke Electric Steel Corporation (Roanoke), located in Roanoke, Virginia, petitioned the Agency to exclude from hazardous waste control a specific waste it intends to generate. After evaluating the petition, on April 29, 1988, EPA proposed to exclude Roanoke's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32, conditional upon Roanoke meeting certain sampling, analysis, and reporting requirements. See 53 FR 15422.

Roanoke petitioned the Agency for an "upfront" exclusion. A petitioner requests an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. When treatment is planned, an upfront delisting petition requests that an exclusion be granted based on untreated waste characteristics, pilot-scale treatment data if available, and process descriptions. As a condition of an upfront exclusion, the Agency may impose batch testing requirements, which often include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may also specify verification testing limitations (*i.e.*, the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion. When the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous. If the actual levels of the constituents are above these levels, the waste is still considered to be hazardous and must be retreated or disposed in accordance with RCRA Subtitle C requirements.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

Roanoke Electric Steel Corporation, Roanoke, Virginia

1. Proposed Exclusion

Roanoke petitioned the Agency for an upfront exclusion of its chemically stabilized electric arc furnace dust (CSEAFD), presently listed as EPA Hazardous Waste No. K061. Roanoke based its petition on the claim that the constituents of concern, although present in the waste, were in an essentially immobile form (*i.e.*, cement-like). To support its claim that both the non-listed and listed constituents of concern would not be present in the fully-cured CSEAFD above health-based levels of concern, Roanoke submitted results from total constituent, EP toxicity, and multiple extraction procedure (MEP) analyses (used to assess stabilized wastes) for all the EP toxic metals, nickel and cyanide. These analyses were performed on representative samples of the fully-cured CSEAFD as generated using a laboratory-scale treatment system. The verification testing conditions attached to the exclusion are designed to ensure that these constituents will not be present in the fully-cured CSEAFD at concentrations above the health-based levels used in delisting decision-making. See 53 FR 15422, April 29, 1988, for a more detailed explanation of why EPA proposed to grant Roanoke's petition for its fully-cured CSEAFD.

2. Agency Response to Public Comments

The Agency received comments on the proposed rule from five commenters. Three of the five commenters supported the Agency's proposed decision to exclude the fully-cured CSEAFD, while the other two commenters opposed the Agency's decision. The objections raised by the two commenters are discussed below.

Petition-Specific Comments

One commenter opposed the Agency's handling of information on Roanoke's stabilization process as proprietary. The commenter believed that without specific details concerning Roanoke's stabilization process and the physical/chemical composition of the stabilized waste, their ability to provide "meaningful" public comment was seriously restricted.

The Agency disagrees with the commenter. As specified in 40 CFR 260.2(b), Roanoke is entitled to assert a claim of business confidentiality covering part or all of the information submitted to EPA in fulfillment of the information requirements of §§ 260.20 and 260.22. Furthermore, Roanoke followed the procedures set forth in 40 CFR 2.203(b) pertaining to confidential business information. Roanoke provided the Agency confidential information detailing the stabilization process. Substantial resources have been invested to develop the stabilization process, and Roanoke is entitled to protect this information in order to license its process and to maintain commercial viability. Furthermore, Roanoke did not seek to protect as confidential any waste-specific information. Data characterizing the physical and chemical composition of both the untreated waste and the CSEAFD were provided in the exclusion petition. The Agency evaluated all information submitted, and provided a thorough discussion in the proposed exclusion of the important characteristics and constituents of the treated waste. Information that was not claimed to be confidential is available in the RCRA public docket for public inspection.

The same commenter stated that it strongly opposed the Agency's proposal to grant Roanoke an exclusion for five reasons, each of which is discussed in turn below. A sixth concern, regarding the initial and subsequent testing requirements is addressed in a later section—*Conditional Testing and Reporting Requirements.*

The commenter stated that the CSEAFD still exhibits one of the criteria for which it was listed—the presence of significant concentrations of the inorganic constituents of concern (*i.e.*, cadmium, chromium, and lead). The commenter also stated that the waste contains significant concentrations of nickel.

The Agency agrees that the presence in K061 wastes of significant total constituent concentrations of the inorganic constituents of concern was

one of the criteria for listing K061 wastes as "T" (toxic) wastes. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management, Section 3001, Identification and Listing of Hazardous Waste," 1980. The Agency, however, believes that data presented in the Background Document characterize the physical/chemical nature of untreated electric arc furnace dusts and that these data are not representative of the physical/chemical nature of stabilized electric arc furnace dust contained in a cement-like waste matrix. Specifically, EPA believes it is reasonable to expect that, as the total constituent concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases (generally, the higher the total constituent concentration of an unbound or loosely bound metal, the higher the potential EP leachate concentration). Thus, wastes having significant total constituent concentrations of unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower total constituent concentrations of unbound or loosely bound metals. In this case, however, the metals in Roanoke's waste are tightly bound within the waste's cement-like matrix. Thus, the Agency believes that the elevated levels of the metals present in Roanoke's waste should not pose a threat to either human health or the environment. The Agency's conclusion that the inorganic constituents of concern (including nickel) are bound in the waste matrix and thus are not available for leaching is supported by the results of the EP and MEP leachate analyses.

EPA evaluated the potential mobility of Roanoke's stabilized waste using the maximum EP or MEP leachate concentrations and the vertical and horizontal spread (VHS) model. For the volume of waste to be generated by Roanoke, the VHS model predicted a dilution factor of approximately 6.3. The Agency believes that the VHS model analysis provides a conservative and reasonable worst-case evaluation of the waste's effect on the underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 53 FR 15422, April 29, 1988, for a description of the modeling analysis of Roanoke's waste.

Furthermore, in delisting evaluations, EPA considers all the factors for which the waste was listed, as well as factors other than those for which the waste was originally listed that could cause the waste to be hazardous. See 42 U.S.C. 6921(f). For this specific wastestream, based on the above discussion, EPA does not believe that any other factors, including elevated total constituent concentrations of the inorganic constituents of concern and nickel, could cause this wastestream to present a hazard to human health and the environment.

The commenter also asserted that the Agency only considered the leachable levels of hazardous constituents and did not consider airborne and waterborne dispersal of the waste.

With regard to possible airborne dispersal, the Agency believes that the commenter's concern regarding airborne dispersal of the waste was based primarily on the characterization of K061 wastes in the listing background document as being fine particles or dusts. The Agency believes that direct contact from airborne exposure to hazardous contaminants from Roanoke's EAF dust (fine particles) is not probable because Roanoke's untreated EAF dust will be regulated as a hazardous waste, thus releases of the EAF dust to the atmosphere should be controlled. Additionally, due to the physical and chemical nature of Roanoke's stabilized waste (*i.e.*, monolithic and nonfriable), the Agency believes that direct contact from airborne exposure to hazardous contaminants from the CSEAFD is unlikely.

With regard to waterborne dispersal of the waste, it is important to note that Roanoke's waste will be stabilized to produce a cement-like waste matrix and handled as hazardous until it is fully cured. The VHS model analysis described in the proposal shows that leachate from the waste that travels through ground water will not exceed health based levels.

The Agency acknowledges that it may also be possible for surface water runoff to transport contaminants from the waste to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would compel a different result for this petition. First, as described in the proposed rule, the Agency believes that landfill disposal is a reasonable worst-case management scenario for Roanoke's solidified waste. Contamination of surface water might occur, therefore, through runoff from the petitioned waste. However, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in the EP leachate analyses reported in the proposal due to the acidic medium of the EP test. Furthermore, any transported constituents would be further diluted in the surface water body.

Secondly, the Agency believes that, in general, the leachate derived from this waste will not directly enter a surface water body without first traveling through the saturated (subsurface) zone where dilution and attenuation of hazardous constituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents. Lastly, if the wastes were exposed to any long-term weathering, the Agency believes that any significant overland transport of hazardous constituents through erosion and runoff is highly unlikely for solidified (cement-like) wastes such as Roanoke's waste.

The commenter also asserted that the calculated hypothetical at-the-well contribution of cadmium, chromium, and lead from Roanoke's waste alone would be substantially more than half of the amount allowed in drinking water under the current standards for these contaminants (*i.e.*, the predicted compliance-point concentrations (CPCs) for cadmium, chromium, and lead are very close to their respective regulatory standards). The commenter, therefore, stated that disposing of this waste with any other contaminant source within the same landfill could readily cause exceedences of the standards.

As the Agency discussed in the **Federal Register** on February 26, 1985 and November 13, 1986 (50 FR 790Q and 51 FR 41085), the VHS model analysis assumes that there are no other potential contaminant sources at the disposal site (*i.e.*, leachate from the waste mixes with non-contaminated ground water). Additionally, without specifying management conditions or considering site-specific characteristics, the Agency cannot modify the VHS model to assess the effects of additional contaminant sources on the underlying aquifer within the same disposal site. The commenter is inferring that wastes should not be delisted unless the predicted at-the-well concentrations of the contaminants are significantly less (*e.g.*, 50 percent, 75 percent, 95 percent) than their respective health-based levels. The Agency does not have any technical basis to support a determination of an appropriate percentage reduction and believes that, without a technical basis, any resulting percentage reduction would be arbitrary. Therefore, until the Agency develops a more sophisticated modeling

procedure and, in light of the conservative nature of the VHS model, EPA will continue to allow wastes to exhibit CPC's up to 100 percent of the health-based standard.

The commenter was further troubled by the CPC for lead since EPA is considering lowering the drinking water standard for lead to 0.02 mg/l. The commenter believes that the waste should be considered hazardous since, if the 0.02 mg/l standard is adopted, the calculated CPC would exceed the standard by a factor of two.

In making delisting decisions, EPA uses the existing health-based levels cited in "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988 (located in the RCRA public docket). EPA cannot predict the final drinking water standard until it is actually promulgated (the standard could be less than or greater than the proposed level or the 0.02 mg/l level cited by the commenter), nor can the Agency be certain when the new standard might be promulgated. Without a new final drinking water standard, the Agency does not believe it is fair to the petitioner to postpone a final rulemaking until a new drinking water standard for lead is promulgated.

The commenter also believes that the Agency did not consider the possibility of dioxin contamination. The commenter's concern of the possibility of dioxin contamination was based on data obtained through the Agency's National Dioxin Study, Tier 4 Combustion Report. (See "National Dioxin Study Tier 4 Combustion Sources: Engineering Analysis Report," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, EPA–450/4–84–014h, September 1987.)

The Agency disagrees with the commenter. EPA evaluated Roanoke's petition and did not believe that any other hazardous constituents, including dioxins, were present in Roanoke's waste. In response to the commenter's specific concern regarding the possibility of dioxin contamination, EPA reviewed the Tier 4 report cited by the commenter. Although data presented in the Tier 4 report indicated that dioxins were present in wastes generated by secondary copper smelters and wire reclamation incinerators, the Agency does not consider it likely for dioxins to be present in Roanoke's waste. As discussed in the Tier 4 report, the principal reasons for the possible presence of dioxins in wastes generated by secondary copper smelters and wire reclamation incinerators are the presence of dioxin-forming precursors in raw materials and low combustion temperatures.

The report noted that secondary copper smelters' raw materials can contain quantities of polyvinyl chloride wire insulation (telephone wire), electrical parts, and other sources of copper (including circuit boards and electrical switches). Wire reclamation incinerators can process polyvinyl chloride wire insulation and polychlorinated biphenyls (PCBs)-containing transformer cores and parts. These types of raw materials contain dioxin-forming precursors.

The report also found that combustion temperatures maintained by both secondary copper smelters and wire reclamation incinerators are low enough to promote the formation of dioxins. Surveyed secondary copper smelting furnaces operated at approximately 1500° F, and wire reclamation incinerators operated at approximately 1000° F (some had afterburners operating at 1900° F).

The Agency reviewed the list of scrap materials Roanoke reported it uses to charge its furnaces, and the Agency does not believe that Roanoke uses wire or electronic scrap. The Tier 4 report states that secondary copper smelters and wire reclamation incinerators are less likely to generate dioxin-containing wastes if they do not use polyvinyl coated wire and low combustion temperatures. Additionally, the Tier 4 report stated that dioxins generally are destroyed at temperatures above 800° C (1472° F), especially in incinerators with residence times of 1.5–2.0 seconds or more. Roanoke's furnaces heat the molten steel to 3000° F. Therefore, Roanoke's furnaces run at more than two times the temperature required to destroy polychlorinated dibenzo-p-dioxins (PCDDs), PCBs, and polychlorinated dibenzofurans (PCDFs). EPA, based on the above discussion, does not believe that it is reasonable to expect dioxins to be present in Roanoke's waste.

The second commenter opposed the Agency's proposal to grant Roanoke an exclusion because it believes that Roanoke's process cannot work, that the process incorporates unnecessary dilution, and that the Agency has allowed Roanoke to use unnecessary dilution.

The Agency disagrees with the commenter. The Agency evaluated Roanoke's treatment process and results from total constituent and EP leachate analyses, and believes that: (1) Roanoke's stabilization process effectively immobilizes all of the EP toxic metals, nickel, and cyanide and, (2) Roanoke's process does not employ unnecessary dilution in order to meet the delisting levels. Table 1 presents a comparison of both the total constituent concentrations of lead and cadmium and the EP leachate concentrations of lead and cadmium in the untreated and treated electric arc furnace dust, respectively. As evidenced by Table 1, the pilot-scale stabilization process reduces the mobility of these metals by significantly more than the two times reduction in total concentration attributable to dilution through the addition of reagents (*i.e.*, 944:1 and 775:1 versus 2.06:1 and 2.23:1, respectively). Put another way, the stabilization process added to the total volume of the waste such that the total concentrations of the constituents of concern decreased to about one-half of the concentrations in the untreated waste yet, the concentrations of these same constituents in the EP-leachate samples decreased by nearly one-thousand fold.

TABLE 1.—COMPARISON OF THE TOTAL AND EP LEACHATE CONCENTRATIONS OF LEAD AND CADMIUM IN THE UNTREATED ELECTRIC ARC FURNACE DUST (EAFD) WITH THE TREATED EAFD

Constituent	Untreated EAFD	Treated EAFD	Ratio
	Total Concentration (mg/kg)	Total Concentration (mg/kg)	Untreated: Treated
Lead	37,330	18,100	2.06:1

TABLE 1.—COMPARISON OF THE TOTAL AND EP LEACHATE CONCENTRATIONS OF LEAD AND CADMIUM IN THE UNTREATED ELECTRIC ARC FURNACE DUST (EAFD) WITH THE TREATED EAFD—Continued

Constituent	Untreated EAFD	Treated EAFD	Ratio
Cadmium	591	265	2.23:1
	EP Concentration (mg/1)	EP Concentration (mg/1)	
Lead	255	0.27	944:1
Cadmium	31	0.04	775:1

The commenter believed that Roanoke's stabilization process utilized a greater quantity of reagent than needed and that other stabilization processes were capable of reducing leachable levels of the metals of concern without the large volume increases incurred by Roanoke's process. The commenter stated that the Agency should adjust the leachate concentrations from the treated wastes to account for the "unnecessary" dilution it believes that Roanoke's process uses. The commenter further suggested that the leachate concentrations from the treated wastes should be adjusted by multiplying the leachate concentrations by the increase in volume from the untreated waste to the treated waste. The commenter is correct, in that other available stabilization processes may utilize a smaller volume of regents than does Roanoke's stabilization process. However, based on the Agency's analysis of Roanoke's stabilization process, Table 1, and the above discussion, EPA does not believe that Roanoke's process incorporates "unnecessary" dilution since there does not appear to be a disproportionate relationship between the increase in waste volume of the treated waste and the resulting decrease in the constituent concentrations. Therefore, the Agency does not believe it is necessary to adjust the leachate concentrations as specified by the commenter.

Conditional Testing and Reporting Requirements

One commenter stated that if the Agency granted Roanoke an exclusion, the conditional requirements of the exclusion should include analyses for total constituent concentrations and MEP constituent concentrations of the hazardous constituents.

The Agency disagrees with the commenter. The Agency expects that this waste will be disposed of in a municipal waste disposal scenario, where soil conditions are generally expected to be mildly acidic. EPA believes that the EP extraction procedure is the most appropriate analytical tool to evaluate the potential leachability of this waste in an acidic environment. For this waste, EPA believes that continued evaluation of the EP leachable concentrations as required by the conditions of this exclusion will be adequate to protect human health and the environment. Furthermore, the Agency does not have health-based standards regulating the total constituent concentrations of any of the EP toxic metals or nickel. To require Roanoke to continually monitor for the total constituent concentrations of all the EP toxic metals and nickel will not ensure further protection of human health or the environment.

Lastly, the Agency does not believe it is necessary to require Roanoke to perform continuous MEP analyses. First, the Agency's belief that the stabilization process is effective is substantiated by the analytical data obtained from the previous MEP leachate tests. Additionally, if the stabilization process were ineffective and an increase in the leachability of the hazardous constituents from the waste were to occur, the Agency believes that the EP leachate analyses would adequately measure such an increase.

The Agency, when evaluating Roanoke's petition, realized that the concentration of the constituents of concern would vary depending on the type and quality of scrap metal charged in the steel making process. To address the possible variation in constituent concentrations, the Agency limited Roanoke's exclusion to cover wastes generated from a specific percentage range of steel turnings, #1 bundles, #2 bundles, #1 steel, #2 steel, busheling, railroad steel, plate and structural steel, shredded scrap, and railroad specialties. See 53 FR 15427, April 29, 1988. The Agency reasoned that, by fixing the percentage of each type of steel scrap within the range used by Roanoke during the time period when Roanoke collected its samples of unstabilized EAF dust, the variation in constituent concentrations would be controlled to within the range that Roanoke demonstrated could be rendered non-hazardous. However, while responding to the comments concerning the proposed testing conditions, the Agency realized that the specifications of the Institute of Scrap Iron and Steel (ISIS) for grading scrap metal were only voluntary guidelines. Therefore, potentially significant variation in the specific type of scrap within a particular category (*e.g.*, #1 bundles, #2 bundles) could occur. As a result, fixing the percentage of each type of steel scrap using the ISIS grading system would not prevent Roanoke's untreated waste from exhibiting variations in metal concentrations outside of the range addressed by Roanoke's petition.

For this reason, the Agency has modified condition (1)(B) in the final rule to require Roanoke to collect and analyze weekly composite samples of the treated CSEAFD indefinitely:

(1)(B) Subsequent testing: Roanoke must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Roanoke then must analyze each weekly composite sample for all of the EP toxic metals and nickel. Analyses must be performed according to SW–846 methodologies. The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Virginia.

The Agency believes that it is necessary to require the petitioner to analyze weekly composites of the CSEAFD in order to ensure that the stabilization process effectively handles the potential variation in constituent concentrations. As stated above, the potential variation in constituent concentrations results from potential changes in the composition of scrap charges. The Agency, however, believes that the composition of the scrap charges will not vary from day-to-day. Rather, the Agency expects that the composition of the scrap charges will change gradually since scrap generally is not purchased

daily. Therefore, the Agency believes that collecting composite samples on a weekly basis, will be sufficient to ensure that the stabilization process generates non-hazardous CSEAFD.

The commercial availability of different types of scrap metal are subject to change with time. Therefore, as described above, the Agency believes it is possible that the composition of the untreated EAF dust will vary over time. The Agency stated in the proposed rule, that future upfront delisting proposals and decisions may include different testing requirements based on an evaluation of the uniformity of the process and the waste. See 53 FR 15427, April 29, 1988. The proposed rule also noted that wastes with variable constituent concentrations, including those discussed in previous delisting decisions (*e.g.*, 51 FR 41323, November 14, 1986), would require continuous batch testing. In the Roanoke exclusion, the Agency believes that the potential variations in waste composition (*i.e.*, constituent concentrations) resulting from changing scrap, warrant the continued testing of weekly composite samples of CSEAFD. As a result, the Agency removed condition (3) *Termination of Testing* in order to reflect the requirement for continual testing of weekly composite samples of the CSEAFD.

The Agency is requiring the petitioner to compile and store on site, all analytical data obtained through the subsequent testing condition (1)(B). The Agency realized that requiring the submission of these analytical data every six months would place an undue burden on both the petitioner and EPA. As condition (1)(B) states, however, the Agency, may at any time, either visit the facility for inspection purposes or request the petitioner to report these data. Therefore, the Agency is maintaining the same level of protection without requiring the petitioner to report these analytical data every six months. Condition (4) *Data submittals* has been renumbered as (3) and now reads:

(3) Data submittals: Within one week of system start-up, Roanoke must notify the Section Chief, Variances Section (see address below) when their full-scale stabilization system is on-line and waste treatment has begun. All data obtained through the initial testing condition (1)(A), must be submitted to the Section Chief, Variances Section, PSPD/OSW, (OS–343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified in condition (1)(A). Failure to submit the required data or keep the required records will be considered by the Agency, at its discretion, sufficient basis to revoke Roanoke's exclusion. All data must be accompanied by the following certification statement:

"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

(Name of Certifying Person)

Date

(Title of Certifying Person)

EPA's Modeling Approach

One commenter stated that the Agency has the discretion to adjust the VHS model to account for waste-specific factors, including increased reserve cation exchange capacity, and reduction in waste permeability. Furthermore, the commenter asserted that the Agency should adjust the VHS model to account for the physical and chemical properties of a stabilized waste. To support this claim, the commenter provided analytical data from studies performed on its own stabilized waste. (The Agency notes that the commenter submitted these comments and data in response to the Agency's proposed exclusion for VAW of America, RCRA public docket no. "F–88–VWEP–FFFFF." The Agency elected to include its response to these comments here because VAW of America does not generate a stabilized waste and this proposal was published in the **Federal Register** on the same date, leading us to believe that the comment was intended for this rulemaking.)

As the Agency previously stated in 50 FR 7882 (February 26, 1985), the overall permeability of stabilized waste is generally not taken into account by the VHS model. The Agency, however, does not believe that the commenter provided adequate information in 1985 or now to support its contention that EPA should modify the VHS model to account for waste-specific factors. As the commenter stated: "It is difficult to accurately determine the exact levels of leachate reduction that will occur under actual environmental conditions." Until such a procedure exists, the Agency cannot modify the VHS model to account for waste-specific factors and will continue to use reasonable, worst-case assumptions in its modeling activities. Furthermore, the Agency does not believe that the commenter supplied adequate data to support the claim that the commenter's waste will remain monolithic, maintain a low permeability, or remain stable indefinitely.

A second commenter supported EPA's proposed use of the VHS model as applied to Roanoke's petitioned waste, and strongly supported EPA's assertion that "it is inappropriate for the Delisting Program to consider extensive site-specific factors in its evaluation of delisting petitions." (See 53 FR 15418 and 15423.) The commenter believed that it is unlawful and inappropriate for EPA to consider any site-specific factors in its evaluation of delisting petitions. This comment does not pertain to this petition or affect the proposed decision since the Agency did not consider any site-specific factors in its evaluation of the petitioned waste. The Agency, therefore, will independently respond to this comment in terms of a separate rulemaking petition filed by the Hazardous Waste Treatment Council which raises this issue with the Agency.

Inconsistencies Between the Delisting Program and the Land Disposal Restrictions Program

Two commenters believed that there are inconsistencies between delisting levels proposed for Roanoke and the Land Disposal Restrictions Program's proposed best demonstrated available technology (BDAT) treatment levels for K061 wastes. See 53 FR 15422, April 29, 1988 and 53 FR 11742, April 8, 1988, respectively. (On August 17, 1988, the Agency promulgated BDAT treatment levels for K061 non-wastewaster wastes. See 53 FR 31138.) Specifically, the first commenter believed that for cadmium, chromium, lead, and mercury, either the total constituent concentration or the leachable constituent levels of Roanoke's CSEAFD substantially exceed the BDAT treatment standards that EPA had proposed for K061 waste. The second commenter believed that the Agency should allow chemical fixation/stabilization as a viable treatment technology for purposes of the Land Disposal Restrictions Program.

The Agency agrees with the commenters that there are differences in approach between some of the decision criteria used in individual delisting

decisions and those used in the Land Disposal Restrictions Program (LDRP). However, these differences are appropriate given the separate functions of the two programs and their different statutory bases. The Delisting Program and the LDRP are fundamentally different in that the Delisting Program's standards are health-based and the LDRP's treatment standards are technology-based. See RCRA section 3001 (42 U.S.C. 6921) and RCRA section 3004 (42 U.S.C. 6924(m)), respectively. The Agency, however, believes that both the health-based and technology-based approaches of the Delisting Program and the LDRP, respectively, are protective of human health and the environment.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the CSEAFD, when subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to Roanoke Electric Steel Company, located in Roanoke, Virginia, for its fully-cured chemically stabilized electric arc furnace dust treatment residue, described in its petition as EPA Hazardous Waste No. K061. The exclusion only applies to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes (including stabilization reagents) are significantly altered, such that an adverse change in waste composition occurs. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to 3009 of RCRA. These more stringent requirements may include a provision which prohibits a federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. Chapter 35) and have been assigned OMB control number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: March 6, 1989.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 2 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Roanoke Electric Steel Corp..	Roanoke, VA.....	Fully-cured chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after March 22, 1989. This exclusion is conditioned upon the data obtained from Roanoke's full-scale CSEAFD treatment facility because Roanoke's original data were obtained from a laboratory-scale CSEAFD treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Roanoke must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing:* (A) *Initial testing:* During the first four weeks of operation of the full-scale treatment system, Roanoke must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW-846 methodologies. Roanoke must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. *(B) Subsequent testing: Roanoke must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Roanoke then must analyze each weekly composite sample for all of the EP toxic metals and nickel. Analyses must be performed according to SW-846 methodologies. The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Virginia.* (2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 1.26 mg/l, or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated or managed and disposed in accordance with Subtitle C of RCRA. *(3) Data submittals: Within one week of system start-up, Roanoke must notify the Section Chief, Variances Section (see address below) when their full-scale stabilization system in on-line and waste treatment has begun. All data obtained through the initial testing condition (1)(A), must be submitted to the Section Chief, Variances Section, PSPD/OSW, (OS-343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified in condition (1)(A). Failure to submit the required data or keep the required records will be considered by the Agency, at its discretion, sufficient basis to revoke Roanoke's exclusion.* All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 USC 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."
*	*	*

[FR Doc. 89-6706 Filed 3-21-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 5

Policies and Procedures for Testimony, Production and Disclosure of Material or Information by FEMA Employees

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Director of the Federal Emergency Management Agency (FEMA) is amending FEMA regulations (44 CFR Part 5, Subpart F) which govern the production and disclosure of records and information contained in materials generated, developed or held by FEMA. The amendment publicizes the delegation to the General Counsel, contained in FEMA Instruction No. 1130.1 (March 3, 1982), of the Director's authority to approve production or disclosure of FEMA materials or information in response to subpoenas or other demands. Where the materials or information sought are contained in the records of the Office of Inspector General, the amendment provides for determinations as to disclosure or production to be made by the Inspector General. The amendment seeks to clarify the prohibition against the production or disclosure of Agency records in response to a subpoena duces tecum by any officer or employee without prior approval of the General Counsel, or the Inspector General as to officers and employees of his or her Office. In addition, material is added governing oral testimony of employees in response to subpoenas or other official demands. The new subpart generally provides that FEMA employees may not give testimony as part of their official duties in litigation in which the United States or FEMA is not a party. This general prohibition is, of course, subject to waiver by the General Counsel (or, as to employees of the Office of Inspector General, by the Inspector General) at his or her discretion. The purpose of this regulation is to maintain FEMA's policy of strict impartiality with respect to private litigants and to minimize the disruption of official duties.

EFFECTIVE DATE: Date of publication.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, General Attorney, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472, (202 646-4111).

SUPPLEMENTARY INFORMATION: On December 23, 1988, FEMA published for comment in the **Federal Register** (Vol. 53, Page 51863) a proposed rule to prescribe a uniform policy for employee conduct in response to subpoenas for testimony or the production of documents in litigation in which neither

the United States nor FEMA are parties. This final rule adopts, with one minor exception, the provisions as set forth in the proposed rule. Although no formal comments were received, internal coordination has prompted the inclusion of provisions allowing for determination by the Inspector General as to production or disclosure of information by employees of the Office of Inspector General in response to subpoenas duces tecum or ad testificandum. Pursuant to the Inspector General Act of 1978 (Pub. L. 95–452; 5 U.S.C. App. 3), as amended on October 18, 1988 (Pub. L. 100–504; 102 Stat. 2515), the FEMA Office of Inspector General is an independent and objective unit of the Agency.

Subpoenas to testify concerning information which employees have acquired in the course of performing official duties, or to produce official documents, are essentially legal actions against the United States as to which there has been no statutory waiver of sovereign immunity. The courts have recognized the authority of Federal agencies to limit compliance with such subpoenas. *See United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951); *Swett* v. *Schenk*, 792 F.2d 1447 (9th Cir. 1986); *Giza* v. *Secretary of HEW*, 628 F.2d 748 (1st Cir. 1980); *Reynolds Metals Co.* v. *Crowther*, 572 F.Supp. 288 (D. Mass. 1982). Moreover, subpoenas by State courts or legislative committees which attempt to assert jurisdiction over Federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution, and a federal regulation prohibiting compliance with such subpoenas reinforces this principle. *See McCullouch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *U.S.* v. *McLeod*, 385 F.2d 734 (5th Cir. 1967); *Municipal Court* v. *Civiletti*, 172 Cal Rptr. 83, 116 Cal. App. 3d 105 (1981).

FEMA's current regulation (44 CFR Part 5, Subpart F) governing response to subpoenas duces tecum provides that such subpoenas should be served on the appropriate Regional Director for regional records, or the General Counsel for any other records held by FEMA. It further provides that employees (other than the General Counsel or Regional Directors) served with a subpoena duces tecum should, unless otherwise directed by the Director, decline to produce the requested documents on the grounds that they are without authority to do so. By FEMA Instruction 1130.1, dated March 3, 1982, the Director delegated to the General Counsel the authority to determine whether Agency personnel should disclose documents or information in response to subpoenas or other demands. By this amendment, the Inspector General is given similar authority to make the necessary determinations for disclosure of documents or information in response to subpoenas duces tecum served on employees of the Office of Inspector General. In addition, this amendment provides that the Inspector General has sole authority to receive service of subpoenas duces tecum for the production of documents or information maintained by the Office of Inspector General. This final rule, therefore, makes it clear that no Agency records are to be produced in response to a subpoena duces tecum, even where served upon an official authorized to acknowledge service of subpoenas, without the approval of the General Counsel or, where appropriate, the Inspector General. These procedures for the central handling of subpoenas are designed to prevent the improper disclosure of Agency documents. They in no way impact upon the Agency's present policy of providing documents for use in private litigation to the fullest extent permitted by law. The amendment also makes clear that absent the approval of the General Counsel (or Inspector General) to respond in strict compliance with the terms of the subpoena, the appropriate response to a subpoena duces tecum is to furnish the private litigant with authenticated copies of Agency documents. This amendment is promulgated in the interest of preserving resources for performance of the official work of the Agency.

FEMA regulations do not currently address the terms on which FEMA employees may testify in response to subpoenas ad testificandum. Accordingly, this rule is intended to fill that void by prohibiting, subject to waiver by the General Counsel (or, as to employees of the Office of Inspector General, by the Inspector General), any employee from appearing in proceedings on behalf of any party other than the United States to testify as to any material contained in the files of the Agency or any information acquired by an employee as part of that person's official duties or because of that person's official status, including the meaning of official Agency documents. The general prohibition against voluntary appearances and compliance with subpoenas is designed to maintain the Agency's policy of strict impartiality with respect to private litigants. Moreover, to the extent that such requests or demands are designed to elicit testimony on official actions and policies, FEMA believes that the best proof can be derived from FEMA records.

FEMA recognizes that there are situations where the Agency would wish to cooperate with State or local authorities as part of the joint responsibility for developing and enforcing floodplain management regulations and other policies. This rule does not preclude such activities in cases where, in the discretion of the General Counsel (or Inspector General), a determination is made that such activity (including the testimony of FEMA employees) wold directly further a FEMA interest or matters of mutual concern and not infringe upon the Agency's resources or ability to maintain its objectivity.

With respect to the related issue of subpoenas for the testimony of FEMA employees in litigation or other adjudicatory proceedings in which the United States or FEMA is a party, this rule provides the Agency the flexibility to substitute other FEMA employees for those named in the subpoena where the public interest and smooth functioning of the Agency so requires.

This rule is an administrative action in support of maintaining normal day-to-day Agency operations, a category of action which has been determined by FEMA to have no significant effect on the human environment. 44 CFR 10.8(c)(2)(viii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

This rule relates solely to internal Agency management and, therefore, is not a "major" rule subject to the requirements of Executive Order 12291.

No information collection requirements are imposed by this final rule. Therefore, the rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.), FEMA certifies that the amendment will not have a significant economic impact on a substantial number of small entities. The rule represents only a change in Agency procedures and practices regarding the availability of Agency documents and employees under compulsory legal process.

List of Subjects in 44 CFR Part 5

Testimony, Production and Disclosure of Information.

For the reasons set forth in the preamble, 44 CFR Part 5, Subpart F is revised to read as follows:

PART 5—[AMENDED]

1. The authority citation of Part 5 is revised to read as follows:

Authority: 5 U.S.C. 552 as amended by sections 1801–1804 of the Omnibus Anti-Drug Abuse Act of 1986 which contains the Freedom of Information Reform Act of 1986 (Pub. L. 99–570); 5 U.S.C. 301 (Pub. L. 85–619); Reorganization Plan No. 3 of 1978; E.O. 12127; and E.O. 12148.

2. Subpart F is revised to read as follows:

Subpart F—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

Sec.

Subpart F—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

§ 5.80 Scope and applicability.

(a) This subpart sets forth policies and procedures with respect to the disclosure or production by FEMA employees, in response to a subpoena, order or other demand of a court or other authority, of any material contained in the files of the Agency or any information relating to material contained in the files of the Agency or any information acquired by an employee as part of the performance of that person's official duties or because of that person's official status.

(b) This subpart applies to State and local judicial, administrative and legislative proceedings, and federal judicial and administrative proceedings.

(c) This subpart does not apply to Congressional requests or subpoenas for testimony or documents, or to an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

§ 5.81 Statement of policy.

(a) It is the policy of FEMA to make its records available to private litigants to the same extent and in the same manner as such records are made available to members of the general public, except where protected from disclosure by litigation procedural authority (e.g., Federal Rules of Civil Procedure) or other applicable law.

(b) It is FEMA's policy and responsibility to preserve its human resources for performance of the official functions of the Agency and to maintain strict impartiality with respect to private litigants. Participation by FEMA employees in private litigation in their official capacities is generally contrary to this policy.

§ 5.82 Definitions.

For purposes of this subpart, the following terms have the meanings ascribed to them in this section:

(a) "Demand" refers to a subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority (e.g., an administrative or State legislative body), signed by the presiding officer, for the production, disclosure, or release of FEMA records or information or for the appearance and testimony of FEMA personnel as witnesses in their official capacities.

(b) "Employee of the Agency" includes all officers and employees of the United States appointed by or subject to the supervision, jurisdiction or control of the Director of FEMA.

(c) "Private litigation" refers to any legal proceeding which does not involve as a named party the United States Government, or the Federal Emergency Management Agency, or any official thereof in his or her official capacity.

§ 5.83 Authority to accept service of subpoenas.

In all legal proceedings between private litigants, a subpoena duces tecum or subpoena ad testificandum or other demand by a court or other authority for the production of records held by FEMA Regional offices or for the oral or written testimony of FEMA Regional employees should be addressed to the appropriate Regional Director listed in § 5.26. For records or testimony of the Office of Inspector General, the subpoena should be addressed to the Inspector General, FEMA, Washington, DC 20472. For all other records or testimony, the subpoena should be addressed to the General Counsel, FEMA, Washington, DC 20472. No other official or employee of FEMA is authorized to accept service of subpoenas on behalf of the Agency.

§ 5.84 Production of documents in private litigation.

(a) The production of records held by FEMA in response to a subpoena duces tecum or other demand issued pursuant to private litigation, whether or not served in accordance with the provisions of § 5.83 of this subpart, is prohibited absent authorization by the General Counsel or, as to records of the Office of the Inspector General, by the Inspector General.

(b) Whenever an official or employee of FEMA, including any Regional Director, receives a subpoena or other demand for the production of Agency documents or material, he or she shall immediately notify and provide a copy of the demand to the General Counsel, unless the subpoena or demand seeks the production of documents or material maintained by the Office of Inspector General, in which case a copy of the demand shall be provided to the Inspector General.

(c) The General Counsel (or Inspector General), after consultation with other appropriate officials as deemed necessary, shall promptly determine whether to disclose the material or documents identified in the subpoena or other demand. Generally, authorization to furnish the requested material or documents shall not be withheld unless their disclosure is prohibited by relevant law or for other compelling reasons.

(d) Whenever a subpoena or demand commanding the production of any record is served upon any Agency employee other than as provided in § 5.83 of this subpart, or the response to a demand is required before the receipt of instructions from the General Counsel (or Inspector General), such employee shall appear in response thereto, respectfully decline to produce the record(s) on the ground that it is prohibited by this section and state that the demand has been referred for the prompt consideration of the General Counsel (or, where appropriate, the Inspector General).

(e) Where the release of documents in response to a subpoena duces tecum is authorized by the General Counsel (or, as to documents maintained by the Office of Inspector General, the Inspector General), the official having custody of the requested records will furnish, upon the request of the party seeking disclosure, authenticated copies of the documents. No official or employee of FEMA shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel (or Inspector General).

§ 5.85 Authentication and attestation of copies.

The Director, Deputy Director, Associate Directors, Administrators, the General Counsel, the Docket Clerk, Inspector General, Regional Directors, and their designees, and other heads of offices having possession of records are authorized in the name of the Director to authenticate and attest for copies or reproductions of records. Appropriate fees will be charged for such copies or reproductions based on the fee schedule set forth in section 5.46 of this part.

§ 5.86 Production of documents in litigation or other adjudicatory proceeding in which the United States is a party.

Subpoenas duces tecum issued pursuant to litigation or any other adjudicatory proceeding in which the United States is a party shall be handled as provided at § 5.8.

§ 5.87 Testimony of FEMA employees in private litigation.

(a) No FEMA employee shall testify in response to a subpoena or other demand in private litigation as to any information relating to material contained in the files of the Agency, or any information acquired as part of the performance of that person's official duties or because of that person's official status, including the meaning of Agency documents.

(b) Whenever a demand is made upon a FEMA employee, other than an employee of the Office of Inspector General, for the disclosure of information described in paragraph (a) of this section, that employee shall immediately notify the Office of General Counsel. Employees of the Office of Inspector General shall notify the Inspector General of such demands. The General Counsel (or Inspector General through designated legal counsel), upon receipt of such notice and absent waiver of the general prohibition against employee testimony at his or her discretion, shall arrange with the appropriate United States Attorney the taking of such steps as are necessary to quash the subpoena or seek a protective order.

(c) In the event that an immediate demand for testimony or disclosure is made in circumstances which would preclude prior notice to and consultation with the General Counsel (or Inspector General), the employee shall respectfully request from the demanding authority a stay in the proceedings to allow sufficient time to obtain advice of counsel.

(d) If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with paragraph (c) of this section pending consultation with counsel, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to testify or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

§ 5.88 Testimony in litigation in which the United States is a party.

(a) Whenever, in any legal proceeding in which the United States is a party, the attorney in charge of presenting the case for the United States requests it, the General Counsel shall arrange for an employee of the Agency to testify as a witness for the United States.

(b) The attendance and testimony of named employees of the Agency may not be required in any legal proceeding by the judge or other presiding officer, by subpoena or otherwise. However, the judge or other presiding officer may, upon a showing of exceptional circumstances (such as a case in which a particular named FEMA employee has direct personal knowledge of a material fact not known to the witness made available by the Agency) require the attendance and testimony of named FEMA personnel.

§ 5.89 Waiver.

The General Counsel (or, as to employees of the Office of Inspector General, the Inspector General) may grant, in writing, a waiver of any policy or procedure prescribed by this subpart, where waiver is considered necessary to promote a significant interest of the Agency or for other good cause. In granting such waiver, the General Counsel (or Inspector General) shall attach to the waiver such reasonable conditions and limitations as are deemed appropriate in order that a response in strict compliance with the terms of a subpoena duces tecum or the providing of testimony will not interfere with the duties of the employee and will otherwise conform to the policies of this part. The Director may, in his or her discretion, review any decision to authorize a waiver of any policy or procedure prescribed by this subpart.

Date: March 15, 1989.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 89-6540 Filed 3-21-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Docket No. 89-03]

Tariff Filing Notice Periods—Exemption

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to the Shipping Act, 1916. This amendment of Part 550 adds a new exemption for carriers providing port-to-port service in the Hawaiian domestic offshore trade. Such carriers now are permitted to publish on one day's notice reductions in existing individual commodity rates, and rates on new tariff items.

DATE: This action is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: By Order served January 27, 1989, in Petition No. P5-88, *Matson Navigation Company, Inc.—Application for Section 35 Exemption*, the Federal Maritime Commission ("FMC" or "Commission") granted to Matson Navigation Company ("Matson"), pursuant to section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 833a, an exemption from certain requirements of the Intercoastal Shipping Act, 1933 ("1933 Act"), *id.* 843 *et seq.* Matson is an ocean common carrier providing port-to-port service in the Hawaiian domestic offshore trade ("Trade"). The Commission's Order permitted Matson to put into effect on one day's notice reductions in existing individual commodity rates, and rates on new tariff items. Under the 1933 Act, such tariff actions ordinarily are subject to thirty days' notice. *Id.* 844.

By notice of proposed rulemaking published in the **Federal Register** on February 2, 1989, 54 FR 5253, the Commission proposed a rule that would extend the same exemption to all FMC-regulated carriers in the Trade. Comments in support of the proposed rule were filed by Sause Bros. Ocean Towing Co., Inc. ("Sause Bros."),

Crowley Maritime Corporation on behalf of Hawaiian Marine Lines, and the U.S. Department of Transportation. No comments in opposition have been received.

Discussion

Section 35 of the 1916 Act authorizes the Commission to grant exemptions from any requirement of the 1933 Act, if "such exemption will not substantially impair effective regulation * * *, be unjustly discriminatory, or be detrimental to commerce." 46 U.S.C. app. 833a. The exemption granted to Matson resulted from the division in jurisdiction over the domestic offshore ocean trades between the FMC, which regulates all-water, port-to-port services pursuant to the 1933 Act, and the Interstate Commerce Commission ("ICC"), which regulates joint intermodal services originating at or destined to interior mainland points. While the 1933 Act requires thirty days' notice for new or reduced all-water rates, the ICC by regulation permits new or reduced motor/water rates to go into effect on one day's notice. 49 CFR 1312.39(h)(1).[1] Matson's chief competitor for westbound container traffic, Sea-Land Service, Inc. ("Sea-Land"), maintains tariffs only at the ICC. As a result, Sea-Land was able to put its rates into effect more quickly even when Matson had taken the initiative in reducing a particular rate.

In granting the exemption sought by Matson, the Commission observed that Matson merely would be permitted to engage in rate competition with Sea-Land under equal notice requirements, and that shippers would benefit from being able to utilize new or reduced rates more quickly. We found that there was no basis to conclude that allowing new rates and individual rate decreases to go into effect on one day's notice would impair effective regulation or otherwise transgress the standards of section 35. The Commission cautioned that section 35 may not be used to essentially deregulate a particular trade or the operations of a particular carrier, but found that these concerns did not apply to Matson's exemption, which did not alter the notice requirements imposed by the 1933 Act on general rate decreases, "across-the-board" decreases, or rate increases of any kind.

Comments in support of Matson's request for an exemption had been filed by Sause Bros., which provides tug-and-barge service in the Trade pursuant to FMC port-to-port tariffs. Sause Bros. claimed that, like Matson, it is competitively disadvantaged as a result of the different notice periods, and asked that the exemption sought by Matson be made applicable to all FMC-regulated carriers in the Trade. However, the question of a trade-wide exemption had not been included in the **Federal Register** notice of Matson's original application and, consequently, interested parties had had no opportunity to comment on that specific issue. The Commission thus could not properly consider a trade-wide exemption in the context of Matson's application, and instead published the instant proposed rule with opportunity for further comment.

The brief comments filed in support of the proposed rule confirm the Commission's preliminary assessment that application on a trade-wide basis of the exemption already granted to Matson should eliminate the possibility of unjust discrimination against carriers other than Matson, remove any remaining unnecessary barriers to equitable rate competition, and extend the benefits of accelerated rate decreases to all shippers in the Trade.[2] Given the absence of adverse comments, there is also no basis to conclude that a trade-wide exemption, limited to new individual rates and rate decreases, will impair effective regulation or be detrimental to commerce within the meaning of section 35.

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Federal Maritime Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, Part 550 of Title 46, Code of Federal Regulations, is amended as follows:

PART 550—[AMENDED]

1. The authority citation for Part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. In § 550.1, the introductory text is redesignated as paragraph (a), paragraphs (a) through (i) are redesignated as paragraphs (a)(1) through (a)(9) respectively, old paragraphs (c) (1) through (3) are redesignated as new paragraphs (a)(3) (i) through (iii), and a new paragraph (b) is added reading as follows:

§ 550.1 Exemptions.

* * * * *

(b) Carriers providing all-water transportation between the continental United States (including Alaska and the District of Columbia) and Hawaii may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from the notice requirements of the Act and the rules of this part.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-6716 Filed 3-21-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 78-72, Phase I; FCC 89-16]

Access Charges

AGENCY: Federal Communications Commission.

ACTION: Final rule.

[1] In *Improvement of TOFC/COFC Regulation*, 364 I.C.C. 731 (1981), *aff'd in relevant part sub nom. American Trucking Associations, Inc.* v. *ICC*, 656 F.2d 1115 (5th Cir. 1981), rail container-on-flatcar traffic, including joint through rail-water traffic, was deregulated from ICC tariff and rate regulation.

[2] In its comments, Crowley Maritime Corporation suggests that the rule also should shorten the notice period for individual rate increases from thirty days to seven days. This is beyond the scope of the proposed rule and will not be adopted. We reiterate, however, that our adoption here of a limited exemption from the requirements of the 1933 Act should not be taken as an indication that we will engage in wide-scale deregulation of the Hawaiian trade as a result of the division in jurisdiction between this agency and the ICC.

SUMMARY: The Commission has modified the Part 69 access charge rules to provide for the optional use of a separate rate element in the recovery of equal access (EA) costs. Local exchange carriers (LECs) may recover equal access costs through the Local Switching rate element or a separate EA rate element. LECs implementing a separate rate element to recover EA costs will be permitted to charge access customers a flat monthly fee applicable either to all Feature Group D trunks or to all presubscribed EA lines. The use of the new rate element will be restricted to recovery of EA costs as defined for separations purposes. This action was taken pursuant to a Notice of Proposed Rulemaking that the Commission issued in 1987 (2 FCC Rcd 254 (1987)) to consider the establishment of permanent procedures for the recovery of equal access costs because the Commission's rules did not provide for a separate rate element to recover the costs of implementing equal access.

EFFECTIVE DATE: June 1, 1989.

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

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, Policy and Program Planning Division, Common Carrier Bureau (202) 632–4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (FCC 89–16), adopted January 18, 1989, and released February 17, 1989. The full text of this Commission decision is 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 contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Commission's rules did not provide for a separate rate element to recover the costs of implementing equal access (EA). However, pursuant to waivers granted by the Commission, all of the Bell Operating Companies and several of the independent telephone companies used a separate rate element for recovery of EA costs assigned to the interstate jurisdiction. Other local exchange carriers recovered EA costs through pre-existing traffic sensitive charges for switched access. In 1987 the Commission issued a Notice of Proposed Rulemaking in this proceeding (2 FCC Rcd. 254 (1987)) to consider the establishment of permanent procedures for the recovery of EA costs.

2. In this Report and Order, the Commission concluded that indefinite continuation of the existing waivers was undesirable, and that the rules should provide for optional use of a separate EA rate element since the benefits of a separate EA rate element are not sufficient to warrant mandatory use of such a charge.

3. The revised rules permit local exchange carriers to recover EA costs through the Local Switching rate element or a separate EA rate element. LECs implementing a separate rate element to recover EA costs will be permitted to charge access customers a flat monthly fee applicable either to all Feature Group D trunks or to all presubscribed EA lines. Use of the new rate element will be restricted to recovery of EA costs as defined for separations purposes. These rule changes generally codify the status quo in which the Bell Operating Companies as well as a limited number of independent telephone companies have been permitted to recover EA costs through a separate rate element pursuant to waivers of the existing rules.

Ordering Clauses

1. Accordingly, *it is ordered*, That the revisions to Part 69 of the Commission's Rules *are adopted*, effective June 1, 1989.

List of Subjects in 47 CFR Part 69

Common carrier, Access charges; Common carrier, Equal access.

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

PART 69—ACCESS CHARGES

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

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

2. Section 69.2 is amended by adding the following definition (paragraph (ll)) to read as follows:

§ 69.2 Definitions.

* * * * *

(ll) "Equal access investment and equal access expenses" mean equal access investment and expenses as defined for purposes of the Part 36 separations rules.

3. Section 69.4 is amended by revising paragraph (b) introductory text and adding new paragraph (d) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(b) Except as provided in Subpart C of this Part and in paragraphs 69.4 (c) and (d),

* * * * *

(d) For the period June 1, 1988 through December 31, 1993, all telephone companies may implement a separate carrier's carrier tariff charge for an Equal Access element. Effective January 1, 1994, all telephone companies shall eliminate separate carrier's carrier tariff charges for an Equal Access element.

4. Part 69 is amended by adding a new § 69.107 to read as follows:

§ 69.107 Equal access.

(a) A monthly charge that is expressed in dollars and cents either per Feature Group D trunk or per presubscribed equal access line shall be assessed by telephone companies that implement an Equal Access element as provided in § 69.4(d) upon all interexchange carriers for either the interstate and foreign Feature Group D access service trunks the interexchange carrier uses or the presubscribed equal access lines the carrier serves.

(b) A monthly charge per Feature Group D trunk shall be computed by dividing the projected annual revenue requirement for the Equal Access element by twelve times the projected annual average number of interstate and foreign Feature Group D access service trunks.

(c) A monthly charge per presubscribed equal access line shall be computed by dividing the projected annual revenue requirement for the Equal Access element by twelve times the projected annual average number of presubscribed equal access lines.

5. Section 69.308 is revised to read as follows:

§ 69.308 Equal access equipment.

Equal Access investment shall be assigned to the Local Switching element unless the telephone company chooses to implement a separate Equal Access element as provided in § 69.4(d) in which case Equal Access investment shall be assigned to the Equal Access element.

6. Section 69.410 is revised to read as follows:

§ 69.410 Equal access expenses.

Equal Access expenses shall be assigned to the Local Switching element unless the telephone company chooses to implement a separate Equal Access element as provided in § 69.4(d) in which case Equal Access expenses shall

be assigned to the Equal Access element.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-6602 Filed 3-21-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 87

[PR Docket No. 87-214; FCC 89-49]

Aviation Services

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This action makes non-substantive amendments to the Commission's aviation services rules. On July 14, 1988, the Commission released a *Report and Order* reorganizing and revising the rules. Aeronautical Radio, Inc. (ARINC) filed a Petition for Reconsideration requesting two substantive revisions and certain other revisions necessary to correct errors that arose during the reorganization and revision. The Commission also received other requests for non-substantive revisions, which were treated as informal petitions for reconsideration. By a Memorandum Opinion and Order, the Commission made the non-substantive revisions as requested and denied ARINC's two substantive requests.

EFECTIVE DATE: March 22, 1989.

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

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Aviation and Marine Branch, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, adopted February 10, 1989, and released March 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. 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., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. This action makes non-substantive amendments to the Commission's aviation services rules. On July 14, 1988, the Commission released a *Report and Order* reorganizing and revising the rules. Aeronautical Radio, Inc. (ARINC) filed a Petition for Reconsideration requesting two substantive revisions and certain other revisions necessary to correct errors that arose during the reorganization and revision. The Commission also received other requests for non-substantive revisions, which were treated as informal petitions for reconsideration. By a *Memorandum Opinion and Order*, the Commission made the non-substantive revisions as requested and denied ARINC's two substantive requests.

2. In its petition, ARINC requested, first, that digital transmissions using emission A9W be allowed throughout the very high frequency (VHF) aeronautical band 117.975-136.000 MHz, subject only to the condition that such transmissions be secondary to voice communications. ARINC pointed to a previous emissions table, since revised, in support of its request. In denying the request, the Commission noted that the pertinent provision was an inconsistency corrected by the *Report and Order*, and that this revision had merely made the Part 87 rules on this point consistent with each other. The Commission stated that, because interested parties had not been provided with notice and an opportunity to comment upon such a significant change, the Commission would not go further and broaden the use of the frequency band.

3. ARINC requested, second, that the bands 1535.0-1557.5 MHz and 1637.5-1660.0 MHz (L-band) be designated for prospective use in the aeronautical mobile satellite (route) service (AMSS (R)). ARINC noted that the previous Part 87 contained this allocation. In denying this request, the Commission explained that the previous allocation was inconsistent with the overall allocation table contained in Part 2 of the Commission's Rules, and that an allocation for AMSS (R) was itself an issue in another, ongoing Commission docket. The Commission stated that it had deleted the Part 87 allocation pending the determination of a final AMSS (R) allocation in the other docket.

4. The amended rules are set forth at the end of this document.

5. The rule amendments adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection, or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease the information collection burden that the Commission imposes on the public.

6. Accordingly, *it is ordered*, That under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), Part 87 is amended as shown at the end of this document, effective March 22, 1989.

7. *It is further ordered*, That the petitions for reconsideration filed by ARINC and others *are granted* to the extent indicated herein and *are denied* in all other respects.

8. *It is further ordered*, That this proceeding is terminated.

List of Subjects in 47 CFR Part 87

Aeronautical stations, Air transportation, Communications equipment, General aviation, Radio.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

Amended Rules

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609, unless otherwise noted.

2. In § 87.5, the term and definition of *Aeronautical enroute station* are revised to read as follows:

§ 87.5 Definitions.

* * * * *

Aeronautical enroute station. An aeronautical station which communicates with aircraft stations in flight status or with other aeronautical enroute stations.

* * * * *

§ 87.23 [Amended]

3. In § 87.23, footnote 1 to the table in paragraph (c) is revised to read: "[1] Equivalent values of power flux density are calculated assuming a free-space characteristic impedence of 376.7 (approximately 120 pi) ohms."

4. In § 87.37, paragraph (a)(3) is revised to read as follows:

§ 87.37 Developmental license.

* * * * *

(a) * * *

(3) The program has reasonable promise of substantial contribution to the use of radio;

* * * * *

5. In § 87.103, paragraph (b) is revised to read as follows:

§ 87.103 Posting station license.

* * * * *

(b) *Aircraft radio stations.* The license must be either posted in the aircraft or kept with the aircraft registration certificate. If a single authorization covers a fleet of aircraft, a copy of the license must be either posted in each aircraft or kept with each aircraft registration certificate.

* * * * *

6. Section 87.111 is revised to read as follows:

§ 87.111 Suspension or discontinuance of operation.

The licensee of any airport control tower station or radionavigation land station must notify the nearest FAA regional office upon the temporary suspension or permanent discontinuance of the station. The FAA center must be notified again when service resumes.

7. Section 87.131 is revised to read as follows:

§ 87.131 Power and emissions.

The following table lists authorized emissions and maximum power. Power must be determined by direct measurement.

Class of station	Frequency band/frequency	Authorized emission(s)	Maximum power [1]
Aeronautical advisory	VHF	A3E	10 watts.
Aeronautical multicom	VHF	A3E	10 watts.
Aeronautical enroute and aeronautical fixed	HF	R3E, H3E, J3E, J7B, H2B	6 kw.
	HF	A1A, F1B, J2A, J2B	1.5 kw.
Aeronautical search and rescue	VHF	A3E, A9W	200 watts.[2]
	VHF	A3E	10 watts.
	HF	R3E, H3E, J3E	100 watts.
Operational fixed	VHF	G3E, F2D	30 watts.
Flight test land	VHF	A3E	200 watts.
	UHF	F2D, F9D, F7D	25 watts.[3]
	HF	H2B, J3E, J7D, J9W	6.0 kw.
Aviation support	VHF	A3E	50 watts.
Airport control tower	VHF	A3E	50 watts.
	Below 400 kHz	A3E	15 watts.
Aeronautical utility mobile	VHF	A3E	10 watts.
Radionavigation land test	108.150 MHz	A9W	1 milliwatt.
	334.550 MHz	A1N	1 milliwatt.
	Other VHF	M1A, XXA, A1A, A1N, A2A, A2D, A9W.	1 watt.
	Other UHF	M1A, XXA, A1A, A1N, A2A, A2D, A9W.	1 watt.
	5031.0 MHz	F7D	1 watt.
Radionavigation land	Various [4]	Various [4]	Various.[4]
	Aeronautical Frequencies		
Aircraft (Communication)	UHF	F2D, F9D, F7D	25 watts.
	VHF	A3E, A9W	55 watts.
	HF	R3E, H3E, J3E, J7B, H2B, J7D, J9W.	400 watts.
	HF	A1A, F1B, J2A, J2B	100 watts.
	Marine Frequencies [5]		
	156.300 MHz	G3E	5 watts.
	156.375 MHz	G3E	5 watts.
	156.400 MHz	G3E	5 watts.
	156.425 MHz	G3E	5 watts.
	156.450 MHz	G3E	5 watts.
	156.625 MHz	G3E	5 watts.
	156.800 MHz	G3E	5 watts.
	156.900 MHz	G3E	5 watts.
	157.425 MHz	G3E	5 watts.
	HF [6]	R3E, H3E, J3E, J2B, F1B, A3E	1000 watts. 250 watts.
	MF [6]	R3E, H3E, J3E, J2B, F1B	1000 watts.
	HF [6]	A3E	250 watts.
(Radionavigation)	Various [7]	Various [7]	Various.[7]

[1] The power is measured at the transmitter output terminals and the type of power is determined according to the emission designator as follows:
(i) Mean power (pY) for amplitude modulated emissions and transmitting both sidebands using unmodulated full carrier.
(ii) Peak envelope power (pX) for all emission designators other than those referred to in paragraph (i) of this note.
[2] Power and antenna height are restricted to the minimum necessary to achieve the required service.
[3] Transmitter power may be increased to overcome line and duplexer losses but must not exceed 25 watts delivered to the antenna.
[4] Frequency, emission, and maximum power will be determined after coordination with appropriate Government agencies.
[5] To be used with airborne marine equipment type accepted for Part 80 (ship) and used in accordance with Part 87.
[6] Applicable only to marine frequencies used for public correspondence.
[7] Frequency, emission, and maximum power will be determined by appropriate standards during the type acceptance process.

§ 87.137 [Amended]

8. In § 87.137, footnote 5 to the table in paragraph (a) is revised to read: "[5] This emission may be authorized for audio frequency shift keying and phased shift keying for digital data links on any frequency listed in § 87.263(a)(1) or § 87.263(a)(3), provided it is multiplexed on the voice carrier. If such use is on a channel used for voice communications, such use is secondary to voice

communications. Ground stations must receive Commission approval prior to using this emission."

9. In § 87.141, paragraph (f) is revised to read follows:

§ 87.141 Modulation requirements.

* * * * *

(f) Each frequency modulated transmitter equipped with a modulation limiter must have a low pass filter between the modulation limiter and the modulated stage. At audio frequencies between 3 kHz and 15 kHz, the filter must have an attenuation greater than the attenuation at 1 kHz by at least 40 $\log_{10}$ (f/3) db where "f" is the frequency in kilohertz. Above 15 kHz, the attenuation must be at least 28 db greater than the attenuation at 1 kHz.

* * * * *

10. In § 87.147, paragraph (c)(3) is revised to read as follows:

§ 87.147 Type acceptance of equipment.

* * * * *

(c) * * *

(3) The frequency bands are as follows: 74.8 MHz to 75.2 MHz; 108.000 MHz to 117.975 MHz; 328.600 MHz to 335.400 MHz; 960.000 MHz to 1215.000 MHz; 1559.000 MHz to 1626.500 MHz; 5000.000 MHz to 5250.000 MHz; 14.000 GHz to 14.4000 GHz; 15.400 GHz to 15.700 GHz; 24.250 GHz to 25.250 GHz; and 31.800 GHz to 33.400 GHz.

§ 87.173 [Amended]

11. In § 87.173, paragraph (b) is amended by adding ",Q" to the "Subpart" column opposite the 9300–9500 MHz frequency band entry.

12. In § 87.217, paragraph (a)(1) is revised to read as follows:

§ 87.217 Frequencies.

(a) * * *

(1) 122.950 MHz at airports that have a part-time or full-time control tower or have a part-time or full-time FAA flight service station.

* * * * *

13. In § 87.263, paragraphs (a)(2) and (e) are revised to read as follows:

§ 87.263 Frequencies.

(a) * * *

(2) A system or network of interconnected enroute stations may employ offset carrier techniques on the frequencies listed in paragraph (a)(1). The carrier frequencies of the individual transmitters must not be offset by more than ±8kHz.

* * * * *

(e) *Long distance operational control.* Long distance operational control frequencies provide communications between aeronautical enroute stations and aircraft stations anywhere in the world for control of the regularity and efficiency of flight and safety of aircraft. World-wide frequencies are not assigned by administrations for MWARA and Regional and Domestic Air Route Area (RDARA).

kHz	
3013.0	10075.0
3494.0	11342.0
5529.0	11348.0
5538.0	13330.0
6637.0	13348.0
6640.0	17925.0
8933.0	21964.0
10033.0	

* * * * *

14. Section 87.265 is revised to read as follows:

§ 87.265 Administrative communications.

Domestic VHF aeronautical enroute stations authorized to use A9W emission on any frequency listed in § 87.263(a)(1) or § 87.263(a)(3) may transmit digital administrative communications on a secondary basis, in addition to the operational and control communications routinely permitted under § 87.261(a) above. Such secondary administrative communications must directly relate to the business of a participating aircraft operator in providing travel and transportation services to the flying public or to the travel, transportation or scheduling activities of the aircraft operator itself. Stations transmitting administrative communications must provide absolute priority for operational control and other safety communications by means of an automatic priority control system.

§ 87.303 [Amended]

15. In § 87.303, the last sentence of paragraph (d)(1) is revised to read as follows: "The Maritime Mobile-Satellite Service will be the only primary service in the 1530.000–1535.000 MHz band after January 1, 1990."

§ 87.305 [Amended]

16. In § 87.305, the next-to-last sentence in paragraph (a)(1) is revised as follows: "The Committee must coordinate in writing all requests for frequencies or proposed operating changes in the 1435–1535 MHz and 2310–2390 MHz bands with the responsible Government Area Frequency Coordinators listed in the NTIA "Manual of Regulations and Procedures for Federal Radio Frequency Management."

§ 87.417 [Amended]

17. In § 87.417, paragraph (a) is amended by adding a period after "(see Subpart L)" and paragraph (b) is amended by adding the following sentence after the list of three frequencies: "The Commission may exempt from these watch requirements the licensee of an airport control tower station if a satisfactory showing has been made that such an exemption will not adversely affect life and property in the air."

§ 87.421 [Amended]

18. In § 87.421, the introductory paragraph is amended by revising the first listed frequency band to read "118.000–121.400 MHz."

19. In § 87.475, paragraphs (b)(8) and (c)(1) are revised to read as follows:

§ 87.475 Frequencies.

* * * * *

(b) * * *

(8) 1559–1626.5 MHz: The use of this band is limited to airborne electronic aids to air navigation and any associated land stations.

(c) * * *

(1) The frequencies set forth in § 87.187(c), (e) through (j), (r), and (t) and § 87.475(b) (6) through (10), and (12) may be assigned to radionavigation land test stations for the testing of aircraft transmitting equipment that normally operate on these frequencies and for the testing of land-based receiving equipment that operate with airborne radionavigation equipment.

* * * * *

§ 87.475 [Amended]

20. In § 87.475, paragraph (c)(2) is amended by changing the punctuation after the word "localizer" from a comma to a semi-colon.

21. Section 87.503 is revised to read as follows:

§ 87.503 Supplemental eligibility.

Licenses for Civil Air Patrol land and mobile stations will be issued only to Wings or the Headquarters of the Civil Air Patrol. All applications must be submitted to the Commission via Civil Air Patrol Headquarters, Maxwell Air Force Base, AL 36112. A single fleet license will be issued to Civil Air Patrol Headquarters and to each Civil Air Patrol Wing to authorize all Civil Air Patrol Station transmitters operated by the Wing or Headquarters.

[FR Doc. 89-6483 Filed 3-21-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 207, 215, 220, 225, 234, 235, 252, 271, and Appendix I

[Defense Acquisition Circular (DAC) 88-5]

Department of Defense Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-5 amends the DoD FAR Supplement (DFARS) with respect to Senior Procurement Executive, Defense Communications Agency; Industrial Preparedness (IP) Planning; Military Standard Parts Control Program; work measurement systems; estimating sytems; labor surplus area policies and procedures; recoupment of nonrecurring costs on sales of U.S. products and technology; Short Form Research Contract; DFARS Appendix I, Material Inspection and Receiving Report; revisions to DAR Supplement No. 1, Contractor Purchasing System Review (CPSR) Program; and editorial changes. This DAC also contains corrections to DAC #88-3.

EFFECTIVE DATE: May 1, 1989, unless otherwise noted in the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 696-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1987 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86-1 through 86-5. Amendments made by DACs 86-6 through 86-16 were published in the **Federal Register** at 53 FR 36171, September 29, 1988, and will be included in the October 1, 1988 revision of the CFR.

B. Public Comments

DAC 88-5, Items I, XI, and XII

Public comments were not solicited with respect to these items because they contain editorial corrections.

DAC 88-5, Items II through VI, IX and X

Public comments were not solicited with respect these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88-5, Item VII

A proposed rule was published in the **Federal Register** on May 23, 1988 (53 FR 18307) and public comments were solicited. Comments received were considered in the development of the final rule.

DAC 88-5, Item VIII

A proposed rule was published in the **Federal Register** on July 21, 1986 (51 FR 26172), and public comments were solicited. The changes to DFARS Subpart 235.70 and 252.235-7005 were required to ensure compliance with Pub. L. 98-369, Competition in Contracting Act (CICA), with regard to establishing guidance on Broad Agency Announcements. Comments received were considered in the development of the final rule.

C. Regulatory Flexibility Act

DAC 88-5, Items I through VI, and IX through XII

These final rules do not constitute a significant revision within the meaning of Pub. L. 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DoD FAR Supplement subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 89-610D in correspondence.

DAC 88-5, Item VII

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., because those firms make only a limited number of commerical sales of defense articles or technology to foreign or domestic customers. A proposed rule was published in the **Federal Register** on May 23, 1988 (53 FR 18307), and public comments were solicited However, not public comments were received concerning the Regulatory Flexbility statement.

DAC 88-5, Item VIII

The Department of Defense certifies that this final rule will not have a sigificant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it does nothing more than ensure compliance with Pub. L. 98-369, Competition in Contracting Act.

D. Paperwork Reduction Act

DAC 88-5, Items I though XII

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 202, 204, 207, 215, 220, 225, 234, 235, 252, 271, and Appendix I

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88-5]

March 1, 1989.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective May 1, 1989.

Defense Acquisition Circular (DAC) 88-5 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 Edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Senior Procurement Executive—Defense Communications Agency (Final Rule)

DFARS 202.101 is revised to reflect the correct designation of the Senior Procurement Executive for the Defense Communications Agency.

Item II—Industrial Preparedness (IP) Planning (Final Rule)

DFARS 207.103(c)(6) and 207.105(b)(17) are added to increase the emphasis on industrial preparedness (IP) planning, surge and mobilization early in the acquisition process and to emphasize the accountability of the program manager to develop an industrial preparedness strategy and an industrial preparedness plan. The development of IP strategies and plans, where applicable, for defense weapon systems will increase DoD awareness of IP problems, enhance quality decisionmaking, and improve the overall ability of the U.S. Defense Industrial

Base to respond to acceleration, surge, and mobilization scenarios.

Item III—Military Standard Parts Control Program (Final Rule)

DFARS 207.105(b)(12)(iv) is revised to include a reference to Military Standard MIL-STD-965, Parts Control Program. Similarly, 234.005-70 is revised to delete the reference to a specific category of items (i.e., nonstandard microcircuit devices) and to substitute a reference to MIL-STD-965, which lists the Federal Supply Classes (FSCs) to which the Standardized Military Drawings Program (SMDP) applies. This revision does not signify that the SMDP no longer applies to the nonstandard microcircuit devices. It merely changes the means by which the applicable FSCs are identified in the DFARS.

Item IV—Work Measurement Systems (Final Rule)

DFARS 215.807(b) has been expanded and DFARS 215.876 has been added to implement Department of Defense policy on Work Measurement Systems (WMS). The new coverage provides guidance on the use of WMS data in the development of pricing objectives and negotiations as well as on its incorporation into solicitations and contracts.

Item V—Estimating Systems (Final Rule)

DFARS 215.811-72(b) and the related clause at 252.215-7003(b) are revised to clarify and facilitate understanding and appropriate application of the requirements of DFARS 215.811.

Item VI—Labor Surplus Area (LSA) Policies and Procedures (Final Rule)

DFARS 220.7000 is revised to authorize the Defense Logistics Agency to prescribe procedures to allow review of the second-tier subcontract level in determining whether substantial performance of a proposed contract will be accomplished in an LSA on clothing procurements when the cut, make and trim (CMT) contractor subcontracts with a converter for the fabrics to be used in the end item garment.

Item VII—Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology (Final Rule)

On August 5, 1985, DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Commercial Sales of Defense Products and Technology", was reissued. This directive modified DoD policy and procedures on establishing and collecting recoupment charges on commercial foreign and domestic sales. To implement DoD Directive 2140.2, the following changes are made to the DFARS:

A new Part 271 is added; § 225.7306, "Recovery of Nonrecurring Costs", and Subpart 235.71 are deleted and the text merged into Part 271; the clause at 252.235-7002 is deleted and a new clause at 252.271-7001 is added to reflect the policy and procedural changes in DoD Directive 2140.2. DFARS 234.005-71 is revised to include the clause to recover nonrecurring costs on contracts for major systems acquisition, and 235.071(c) is revised to include the new clause.

A proposed rule was published in the **Federal Register** on May 23, 1988, and public comments were solicited. Comments received were considered in the development of the final rule.

Item VIII—Short Form Research Contract (Final Rule)

DFARS 235.70 and the clauses at 252.235 are revised to ensure compliance with Pub. L. 98-369, Competition in Contracting Act (CICA), with regard to establishing guidance on Broad Agency Announcements. Prior to CICA, Short Form Research Contracts were used only for unsolicited proposals from educational institutions and nonprofit organizations. CICA allowed for conversion to the competitive procedures set forth in FAR 6.102(d)(2). This procedure recognizes as competition the selection of basic research proposals resulting from Broad Agency Announcements and peer or scienific proposal review. The revisions authorize the Short Form Research contract for competitive awards. Paragraph (e) of § 235.7008 has been revised to clarify guidance for clause identification when the contract amount is under $25,000. A proposed rule was published in the **Federal Register** on July 21, 1986 (51 FR 26172) with request for comments. Comments received were considered in the development of the final rule.

Item IX—Appendix I, Material Inspection and Receiving Report (Final Rule)

Appendix I of the DFARS is revised to require contractors to include unit prices on DD Forms 250 when the end item will be shipped to a contractor as Government-furnished property.

Item X—Revisions to DFARS (DAR) Supplement No. 1, Contractor Purchasing System Review (CPSR) Program (Final Rule)

DAR Supplement No. 1, paragraphs S1-303.2 and S1-305.1 are revised to provide policy for using the contractor's automated purchasing system files when performing a CPSR.

Note: DAR Supplement No. 1 is not codified in the Code of Federal Regulations, and it is not part of the subscription to the DoD FAR Supplement. It must be purchased separately from the Govenment Printing Office.

Item XI—Editorial Corrections (Final Rule)

(a) DFARS 204.670-3(b) is revised to reflect the correct title for Commercial and Government Entity (CAGE) Codes.

(b) DFARS 204.671-5(e) is revised to reflect the correct title for Contracted Advisory and Assistance Services.

(c) "Pen-and-ink" change is made to 215.811-77(c) (page 215.8-18) to reflect correct spelling of the word "analytical". (No replacement page furnished.)

(d) "Pen-and-ink" change is made to 215.811-78(b)(1) (page 215.8-19) to reflect correct spelling of the word "results". (No replacement page furnished.)

Note: "Pen and ink" changes noted in this item pertain to the loose-leaf version of the DoD FAR Supplement.

Item XII—Corrections to DAC #88-3

(a) DAC #88-3, Item VI, page 5, is corrected to change the notation for replacement pages at the end of the item to read "and 231.2-1 through 231.2-3" in lieu of "231."

(b) The instructions for replacement pages are corrected to change the instruction "insert 231.2-1 through 231.3" to read "insert 231.2-1 through 231.2-3".

Note: The corrections noted in this item pertain to notes and filing instructions for the loose-leaf version of the DoD FAR Supplement and are not applicable to the Code of Federal Regulations.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Parts 202, 204, 207, 215, 220, 225, 234, 235, 252, 271, and Appendix I continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101 is amended by substituting in the definition for "Senior Procurement Executive" the designation for "Department of Defense" to read "Under Secretary of Defense (Acquisition)" in lieu of "Deputy Secretary of Defense"; and the designation for "Defense

Communications Agency" to read "The Deputy Director, Acquisition Management, Defense Communications Agency" in lieu of "The Director, Defense Communications Agency".

PART 204—ADMINISTRATIVE MATTERS

204.670–3 [Amended]

3. Section 204.670–3 is amended by substituting in the title for paragraph (b) the word "Commercial" in lieu of the word "Contractor".

204.671–5 [Amended]

4. Section 204.671–5 is amended by substituting in paragraph (e) in the title for Item El, the word "Contracted" in lieu of the word "Contracting"; and by substituting in paragraph (e) under "Item El" in "code Y" the word "Contracted" in lieu of the word "Contracting".

PART 207—ACQUISITION PLANNING

5. Section 207.103 is amended by adding paragraph (c)(6), to read as follows:

207.103 Agency-head responsibilities.

* * * * *

(c)(6) Procedures shall be established to ensure that for written acquisition plans meeting the criteria and thresholds of paragraph (c)(2) above, the program manager's industrial preparedness strategy and plan to accelerate, surge, or mobilize production has been considered in the acquisition strategy and has been documented either by text or by reference in the acquisition plan. This strategy should clearly include secondary items, spare parts, etc., necessary to support the system.

6. Section 207.105 is amended by revising paragraph (b)(12)(iv) and by adding paragraph (b)(17), to read as follows:

207.105 Contents of written acquisition plans.

* * * * *

(b)(12) * * *

(iv) See DoDD 4120.3 for procedures relative to standardization, DoDI 4120.19 for procedures relative to the DoD Parts Control Program, and Military Standard MIL–STD–965, Parts Control Program, for procedures relative to the Standardized Military Drawing Program.

(b)(17) *Industrial Preparedness (IP).*

(i) Provide the program's IP strategy that assesses the capability of the US Industrial Base to achieve identified surge and mobilization goals. If no IP strategy has been developed, provide supporting rationale for this position.

(ii) If in the IP strategy, the development of a detailed IP plan was determined to be applicable, include the plan by text or by reference. If the development of the IP plan was determined to be not applicable, summarize the details of the analysis forming the basis of this decision.

(iii) If the program involves both peacetime and wartime hardware configurations which are supported by logistic support plans, identify the impact of these plans on the IP plan.

PART 215—CONTRACTING BY NEGOTIATION

215.807 [Amended]

7. Section 215.807 is amended by adding at the end of paragraph (b) a sentence to read: "The contracting officer shall consider data resulting from the application of work measurement systems in the development of pricing objectives and negotiations."

215.811–72 [Amended]

8. Section 215.811–72 is amended by adding in paragraph (b) between the word "review" and the word "in" the words "in accordance with subsections 215.811–75 to 215.811–78 and".

9. Section 215.876 is added to read as follows:

215.876 Work measurement systems.

(a) *Definition.* "Work measurement systems (WMS)", as used in this section, means systems used to analyze the touch labor content of a manufacturing operation, establish labor standards for that operation, and measure and analyze variances from those standards. The purpose of WMS is to continuously improve both the manufacturing operation and the labor standards used in that operation.

(b) *Policy.* It is the policy of the Department of Defense to use WMS, when appropriate, to provide data for use in planning, cost estimating, and monitoring contract performance. The contracting officer, in coordination with the Program Manager, shall include provisions in the contract to implement the program's work measurement system requirements. An example of an acceptable set of criteria for WMS is found in MIL–STD–1567A. Either MIL–STD–1567A or the contractor's WMS, if acceptable to the Government, should be appropriately tailored for the specific program or contract.

(c) *Applicability.* Except as provided below, solicitations and resulting production contracts for major weapons systems or subsystems in excess of $20 million annually or a total cost of $100 million normally should contain provisions for WMS, appropriately tailored to be both consistent with program requirements and compatible with existing contractor technical and management processes and procedures, such as the principle of continuous improvement of the total quality management process. WMS requirements may also be included in Full Scale Development (FSD) contracts exceeding $100 million when appropriate (e.g., to assist in transitioning from FSD to production). Work measurement systems should not be required when:

(1) Procuring commercial products (see FAR 11.001);

(2) There will be low volume, nonrepetitive production runs;

(3) The submission and certification of cost or pricing data is not required; or

(4) There will not be a cost benefit from the imposition of these systems. This decision will be documented and approved in accordance with agency procedures.

PART 220—LABOR SURPLUS AREA CONCERNS

10. Section 220.7000 is amended by designating the existing paragraph as paragraph (a) and by adding paragraph (b) to read as follows:

220.7000 Scope.

* * * * *

(b) The Defense Logistics Agency is authorized to prescribe procedures for clothing acquisitions that permit granting labor surplus area status based on first- and second-tier subcontractors, when the first-tier subcontractor is a converter.

PART 225—FOREIGN ACQUISITION

225.7306 [Removed and Reserved]

11. Section 225.7306 is removed and the section marked "Reserved."

PART 234—MAJOR SYSTEM ACQUISITION

234.005–70 [Amended]

12. Section 234.005–70 is amended by removing in the penultimate sentence following the word "Program" the remainder of the sentence and substituting the words "Military Standard MIL–STD–965, Parts Control Program, identifies the FSC class(es) for which Standardized Military Drawings are to be prepared to document nonstandard parts approved for use in design."

13. Section 234.005–71 is amended by designating the existing paragraph as

paragraph (a) and by adding paragraph (b) to read as follows:

234.005–71 Contract clauses for major systems acquisitions.

* * * * *

(b) The contracting officer shall include the contract clause at 252.271–7001, "Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for Use of DoD Technical Data", as provided for in 271.004(a).

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

14. Section 235.071 is amended by revising paragraph (c) to read as follows:

235.071 Contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 252.271–7001, Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for Use of DoD Technical Data, as provided for in 271.004(a).

235.7000 [Amended]

15. Section 235.7000 is amended by removing the comma after the word "research" and substituting a period; and by removing the remainder of the sentence.

16. Section 235.7002 is amended by removing at the end of paragraph (a)(1) the word "or"; and by revising paragraph (a)(3) to read as follows:

235.7002 Applicability.

(a) * * *

(3) When the basis for award is either:

(i) A basic research proposal responding to a broad agency announcement (FAR 6.102(d)(2)); or

(ii) An unsolicited research proposal (FAR 6.302–1); or

(iii) A proposal establishing or maintaining an essential engineering, research, or development capability (FAR 6.302–3); and

* * * * *

235.7003 [Amended]

17. Section 235.7003 is amended by substituting the word "research" in lieu of the word "unsolicited" in the title of the section and the first word of the first sentence of the introductory paragraph; by removing the word "unsolicited" from the second sentence of the introductory paragraph; and by substituting in the statement contained in paragraph (g) the words "effective date of the contract" in lieu of the words "date of this proposal".

18. Section 235.7004 is amended by revising paragraph (a); by redesignating paragraphs (c) through (h) as paragraphs (d) through (i); by adding a new paragraph (c); by substituting in the redesignated paragraph (d) the word "research" in lieu of the word "unsolicited"; by removing in the redesignated paragraph (d) the phrase ", either as submitted initially, or as amended in writing by the offeror,"; and by substituting in the first sentence of the redesignated paragraph (e) the word "research" in lieu of the word "unsolicited"; to read as follows:

235.7004 Contracting procedures.

(a) The contracting officer may award a Short Form Research Contract (SFRC) under full and open competition procedures of FAR Subpart 6.1 when it is based on a proposal which was submitted in response to a broad agency announcement under FAR 6.102(d)(2), contains the information required by 235.7003, and has been recommended for award under the peer or scientific review procedures of FAR 6.102(d)(2).

* * * * *

(c) The contracting officer may award an SFRC under the procedures of FAR Subpart 6.3 for other than fulll and open competition when—

(1) It is based on an unsolicited research proposal that meets the criteria of FAR 6.302–1 and has been submitted, evaluated, and accepted under the policies and procedures of FAR Subpart 15.5 and 215.5; or

(2) Pursuant to FAR 6.302–3, it is necessary to award a contract to establish or maintain an essential engineering research or development capability.

* * * * *

235.7008 [Amended]

19. Section 235.7008 is amended by changing the dollar figure in paragraph (a) from "$10,000" to read "$25,000"; by adding in the first sentence of paragraph (a) between the word "the" and the word "date" the word "effective"; by substituting in the first sentence of paragraph (a) the word "contract" for the words "offeror's proposal"; and by changing the dollar figure in both places in paragraph (e) from "$10,000" to read "$25,000"; and by removing in paragraph (e) between the word "are" and the word "applicable" the word "not".

20. Section 235.7010 is added to read as follows:

235.7010 Uniform contract format.

The Short Form Research Contract is exempt from Uniform Contract Format requirements as specified in FAR 15.406.

Subpart 235.71—[Reserved]

21. Subpart 235.71, consisting of sections 235.7100 through 235.7104, is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215–7003 [Amended]

22. Section 252.215–7003 is amended by adding a sentence at the end of paragraph (b) of the clause to read: "The Contractor's estimating system must be in compliance with subsection 215.811–74 of the DoD FAR Supplement."

252.235–7002 [Removed and Reserved]

23. Section 252.235–7002 is removed and the section marked "Reserved."

24. Section 252.235–7005 is amended by substituting in the fourth sentence of the introductory paragraph between the word "nonprofit" and the word "only" the word "organizations" in lieu of the word "institutions"; by changing the dollar figure in the last sentence of the introductory paragraph from "$10,000" to read "$25,000"; by designating lettered paragraphs (a) through (www) for each referenced clause; by revising the designated paragraphs (a) through (lll); by changing the date of the clause in the designated paragraph (mmm) to read "(FEB 1989)" in lieu of "(AUG 1983)"; by removing from the clause in paragraph (mmm) the word "unsolicited"; by changing the date of the clause in the designated paragraph (rrr) to read "(FEB 1989)" in lieu of "(APR 1984)"; by substituting in paragraphs (c) and (d) of the clause in paragraph (rrr) the number "27a" in lieu of the number "27A"; by changing the date of the clause in the designated paragraph (sss) to read "(FEB 1989)" in lieu of "(APR 1984)"; by removing in paragraph (b) of the clause in paragraph (sss) the comma after the word "property" and placing the words "except material" within parentheses; by revising paragraph (b)(3) of the clause in paragraph (sss); by revising the last sentence of paragraph (e) of the clause in paragraph (sss); by substituting in paragraph (g) of the clause in paragraph (sss) the words "calendar year or" in lieu of the words "calendar year of"; by changing the date of the clause in the designated paragrah (ttt) to read "(FEB 1989)" in lieu of "(APR 1984)"; by removing in the first sentence of paragraph (a) of the clause in paragraph (ttt) the word "unsolicited"; by removing in paragraph (b) of the clause in paragraph (ttt) the word "unsolicited"; and by adding paragraph (xxx) to read as follows:

252.235-7005 Short form research contract clauses.

* * * * *

(a) Definitions, FAR 52.202-1.

(b) Officials Not to Benefit, FAR 52.203-1.

(c) Gratuities, FAR 52.203-3.

(d) Covenant Against Contingent Fees, FAR 52.203-5.

(e) Anti-Kickback Procedures, FAR 52.203-7.

(f) Statutory Compensation Prohibitions and Reporting Requirements Related to Certain Former Department of Defense (DoD) Employees, DFARS 252.203-7002. (Applicable to all contracts of $100,000 or more, awarded to major defense contractors, i.e., those awarded defense contracts aggregating $10 million or more during the previous Government fiscal year. The clause does not apply to state or local governments.)

(g) Overseas Distribution of Defense Subcontracts (See 252.204-7005 of this Supplement) (applicable only when contract action exceeds $500,000 or when any modification increases contract amount to more than $500,000).

(h) Examination of Records by Comptroller General, FAR 52.215-1.

(i) Audit—Negotiation, FAR 52.215-2.

(j) Price Reduction for Defective Cost or Pricing Data, FAR 52.215-22 (applicable to cost-plus-fixed-fee contract actions exceeding $100,000; applicable to subcontracts under cost-no-fee prime contracts if contract action exceeds $100,000).

(k) Subcontractor Cost or Pricing Data, FAR 52.215-24 (applicable only if FAR 52.215-22 applies).

(l) Intregrity of Unit Prices, FAR 52.215-26 (applicable when contract action exceeds $25,000).

(m) ** Facilities Capital Cost of Money, FAR 52.215-30 (applicable as set forth in the clause).

(n) ** Waiver of Facilities Capital Cost of Money, FAR 52.215-31 (applicable as set forth in the clause).

(o) Order of Precedence, FAR 52.215-33.

(p) Aggregate Pricing Adjustment (See 252.215-7000 of this Supplement) (applicable only if contract action exceeds $100,000 and FAR 52.215-22 applies).

(q) Allowable Cost and Payment, FAR 52.216-7.

(r) ** Fixed Fee, FAR 52.216-8 (applicable only in cost-plus-fixed-fee contracts).

(s) Cost Contract—No Fee, FAR 52.216-11 and Alternate I. As authorized by Alternate I, paragraph (b) of the basic clause is deleted.

(t) Cost-Sharing Contract—No Fee, FAR 52.216-12 and Alternate I. As authorized by Alternate I, paragraph (b) of the basic clause is deleted.

(u) * Predetermined Indirect Cost Rates, FAR 52.216-15 (applicable only when the contractor has an executed negotiation agreement with the cognizant contract administration office).

(v) Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, FAR 52.219-8.

(w) Utilization of Women-Owned Small Businesses, FAR 52.219-13.

(x) Utilization of Labor Surplus Area Concerns, FAR 52.220-3.

(y) Payment for Overtime Premiums, FAR 52.222-2. (Note: The word "zero" is inserted in the blank space indicated by an asterisk. Clause applicable only when contract action exceeds $100,000.)

(z) Convict Labor, FAR 52.222-3.

(aa) Equal Opportunity, FAR 52.222-26. Alternate I shall be added as a special provision when applicable per Alternate I instructions.

(bb) Affirmative Action for Special Disabled and Vietnam Era Veterans, FAR 52.222-35.

(cc) Affirmative Action for Handicapped Workers, FAR 52.222-36.

(dd) Clean Air and Water, FAR 52.223-2 (applicable only if contract action exceeds the dollar amount set forth in the preamble to the clause).

(ee) Authorization and Consent, FAR 52.227-1, and Alternate I.

(ff) Notice and Assistance Regarding Patent and Copyright Infringement, FAR 52.227-2.

(gg) Patent Rights—Retention by the Contractor (Short Form), FAR 52.227-11.

(hh) Rights in Technical Data and Computer Software and Alternate I (See 252.227-7013 of this Supplement).

(ii) Restrictive Markings on Technical Data (See 252.227-7018 of this Supplement).

(jj) Identification of Technical Data (See 252.227-7029 of this Supplement).

(kk) ** Technical Data—Withholding of Payment (See 252.227-7030 of this Supplement).

(ll) Patents—Subcontracts (See 252.227-7034 of this Supplement).

(mm) Insurance—Liability to Third Persons, FAR 52.228-7. Alternates I or II apply under the circumstances set forth herein.

(nn) ** Cost Accounting Standards, FAR 52.230-3 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).

(oo) ** Administration of Cost Accounting Standards, FAR 52.230-4 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).

(pp) ** Disclosure and Consistency of Cost Accounting Practices, FAR 52.230-5 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).

(qq) Supplemental Cost Principles (See 252.231-7000 of this Supplement) (applicable to nonprofit institutions only when allowability of costs is determined in accordance with FAR Subpart 31.2).

(rr) Penalties for Unallowable Costs, DFARS 252.231-7001 (applicable when contract action exceeds $100,000).

(ss) ** Limitation on Withholding of Payments, FAR 52.232-9.

(tt) Limitation of Cost, FAR 52.232-20 (applicable only when contract action is fully funded).

(uu) Limitation of Funds, FAR 52.232-22 (applicable only when contract action is incrementally funded).

(vv) Assignment of Claims, FAR 52.232-23.

(ww) Disputes, FAR 52.233-1.

(xx) Protest After Award and Alternate I, FAR 52.233-3.

(yy) Certification of Requests for Adjustment or Relief Exceeding $100,000 (See 252.233-7000 of this Supplement) (applicable only if contract action exceeds $100,000).

(zz) Care of Laboratory Animals, DFARS 252.235-7003.

(aaa) Notice of Intent to Disallow Costs, FAR 52.242-1.

(bbb) Certification of Indirect Cost, DFARS 252.242-7003.

(ccc) **Changes—Cost-Reimbursement, FAR 52.243-2 and Alternate V.

(ddd) Subcontracts Under Cost-Reimbursement and Letter Contracts, FAR 52.244-2.

(eee) Competition in Subcontracting, FAR 52.244-5.

(fff) Government Property (Cost-Reimbursement, Time and Material, or Labor-Hour Contracts), FAR 52.245-5 and Alternate I.

(ggg) Preference for U.S.-Flag Air Carriers, FAR 52.247-63.

(hhh) Termination for Convenience of the Government (Educational and Other Nonprofit Institutions), FAR 52.249-5 (applicable as set forth in clause preamble).

(iii) **Termination (Cost-Reimbursement), FAR 52.249.6 (applicable only to cost-plus-fixed-fee contracts).

(jjj) **Excusable Delays, FAR 52.249-14 (applicable only to contracts to which FAR clause 52.249-6 "Termination (Cost-Reimbursement)" is applicable).

(kkk) Government Supply Sources, FAR 52.251-1.

(lll) Ordering From Government Supply Sources (See 252.251-7000 of this Supplement.

(mmm) Work to be Performed.

* * * * *

(nnn) Acknowledgment of Sponsorship.

* * * * *

(ooo) Publications.

* * * * *

(ppp) Reporting Requirements.

* * * * *

(qqq) Option to Extend the Term of the SFRC.

* * * * *

(rrr) Contractor-Acquired Property.

* * * * *

(sss) Title to Contractor-Acquired Property.

* * * * *

(b) * * *

(3) For which the Contracting Officer has authorized acquisition by the Contractor (i) at the time of award of the contract or modification as provided by the clause of this contract entitled "Contractor-Acquired Property", or (ii) subsequent to award pursuant to FAR 52.244-2.

* * * * *

(e) * * * The provisions of FAR 52.245-5 and Alternate I apply to any changes in property.

* * * * *

(End of clause)

(ttt) Research Responsibility.

* * * * *

(uuu) Restriction on Printing.

* * * * *

(vvv) Contract Items Requiring Experimental, Developmental or Research Work.

* * * * *

(www) Advance Payments.

* * * * *

(xxx) Inspection and Acceptance.

INSPECTION AND ACCEPTANCE (FEB 1989)

Inspection and acceptance of the final delivery under this contract will be accomplished by the Scientific Program Officer designated in Block 11 on the DD Form 2222 of this contract, who shall have at least thirty (30) days after contractual delivery for acceptance.

(End of clause)

25. Section 252.271–7001 is added to read as follows:

252.271–7001 Recovery of nonrecurring costs on commercial sales of defense products and technology and of royalty fees for use of DoD technical data.

As prescribed in 271.004(a), insert the following clause.

Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for Use of DoD Technical Data (FEB 1989)

(a) *Definitions.* As used in this clause:

"Derivative Item" means an item derived from a Defense item which consists of common parts equal to, or more than, ten percent (10%) of the Defense item.

"Direct Sale" means a commercial sale to a non-U.S. Government customer, either foreign or domestic, by a Defense contractor of products, technology, material, services, or development or production techniques that originally were developed, or improved using DoD appropriations or funds.

"DoD" Focal Points"—See § 271.006.

"Foreign Military Sale (FMS)" means a sale, by the DoD, of Defense articles or Defense services to a foreign government or international organization under authority of the Arms Export Control Act.

"License" means the legal right to use technical data with or without compensation and with or without restrictions.

"Nonrecurring Costs (NC)" includes DoD costs as follows:

(1) The costs funded by a Research, Development, Test, and Evaluation (RDT&E) appropriation to develop or improve the product or technology under consideration either through contract DoD or in-house effort. This includes costs of any engineering change proposal initiated before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned.

(2) The costs funded by either procurement or operation and maintenance (O&M) appropriations in support of production. These are one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. These NC include DoD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. This includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made in accordance with the FAR or DoD FAR Supplement.

"Non-U.S. Contractor" means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

"Pro Rata Recovery of Nonrecurring Costs" means equal distribution (proration) of a pool of nonrecurring costs to a specific number of units that benefit from the investment so that a DoD Component will collect from a customer a fair (pro rata) share of the investment in the product being sold.

"Royalty Fee" means a charge that is assessed for the use of DoD technical data for the purpose of manufacturing an item for a non-U.S. Government customer. The purpose of the charge is to recoup an appropriate share of the DoD NC incurred to develp the technical data and technology.

"Scheduled Nonrecurring Recoupment Charges" means charges published in a DoD Directive, Instruction, or Manual. Royalty fee percentages are published in DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology." Unit charges on specific items of equipment are published in DoD 5105.38–M, "Security Assistance Management Manual", and DoD 7290.3–M, "FMS Financial Management Manual."

"Special RDT&E and Nonrecurring Production Costs" means costs incurred at the request of, or for the benefit of, a foreign customer to develop a special feature or unique requirement.

"Technical Data" is defined in 227.471.

"Technology" means information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or material. The data may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice to implement DoD Directive 2140.2.

(b) The Contractor agrees to reimburse the U.S. Government for a fair share of the U.S. Government's investment in special RDT&E and nonrecurring production costs on domestic or foreign commercial sales of defense articles and technology subject to a recoupment charge. The fair share is determined by the DoD following procedures set forth in DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology."

(c) Sales where the U.S. Government is the eventual purchaser are not subject to this clause.

(d) In the event the Contractor intends to enter into domestic or foreign commercial sales for items in this contract, or essentially similar items, or to enter into license or technical assistance agreements for the technology developed under this contract, the Contractor shall:

(1) Determine if the DoD has a scheduled nonrecurring recoupment charge for the article or technology being sold or transferred.

(i) Where a charge has been established, the Contractor may request that a charge be reviewed if significant changes in factors or assumptions have occurred.

(ii) If the DoD Focal Point has not responded to a Contractor's request within thirty (30) days, the recoupment charge will be four percent (4%) of the sales price.

(2) Provide the DoD Focal Point with commercial sales forecasts of articles and technology subject to a recoupment charge when required.

(3) Notify the DoD Focal Point of all commercial sales (either foreign or domestic), that are subject to a recoupment charge. The notification will identify the product or technology being sold or licensed for production, the purchaser, the quantity sold, the applicable recoupment charges, the time frame for delivery, and the identification of the export license (commercial or state) if sale is for export. The notification will be made when each agreement for sale of a defense article or technology is made.

(4) Pay the established recoupment charges to the DoD Focal Point within thirty (30) days following delivery to or acceptance of the item by a purchaser (whichever comes first) or such other time as may be agreed to by the parties.

(5) Certify, on or before the sixtieth (60th) day following the end of each calendar year during which recoupment amounts were due, to the applicable Department of Defense Focal Point that proper notification to the U.S. Government of all commercial sales subject to this clause has been accomplished. The certificate to be executed by the Contractor is shown below:

Certificate of Notification of all Commercial Sales Subject to the Clause 252.272–7001

This is to certify that, to the best of my knowledge and belief, all notices required by DFARS 252.271–7001 have been provided and are accurate, complete, and current as of the end of the calendar year* _____.

_____

Firm

_____

Name

_____

Title

_____

Date of execution**

*Insert the current calendar year.

**Insert the day, month, and year of signing, which shall be on or before the sixtieth (60th) day following the end of each calendar year during which recoupment amounts were due.

(End of Certificate)

(e) In the case of a commercial sale to a foreign government or international organization that qualifies for U.S. Government Foreign Military Sales, the Contractor agrees to inform his customer that any Defense-furnished goods, services, and transportation (i.e., DoD support costs) can be provided only by means of a Foreign Military Sales case (DoD Offer and Acceptance, DD Form 1513), executed by the U.S. Government and the customer.

(f) In the event of a commercial sale of items developed under this contract, or essentially similar items, or sale or license of technology relating thereto, the Contractor agrees to relieve the Government of any and all loss or liability that might result from the Contractor's use of Government data, tooling, test equipment, or facilities.

(End of clause)

26. A new Part 271, consisting of sections 271.000 through 271.006, is added to read as follows:

PART 271—RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES OF DEFENSE PRODUCTS AND TECHNOLOGY AND OF ROYALTY FEES FOR USE OF DOD TECHNICAL DATA

Sec.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

271.000 Scope.

This part sets forth policy and procedures established in DoD Directive 2140.2 for the recovery of nonrecurring costs and royalty fees on commercial sales by contractors of products, components, and related technology developed with DoD appropriations or, in special cases, with Foreign Military Sales (FMS) customer funds. The policy applies to material, equipment, licenses, derivative items, computer software, and technical data. The objective of recovery is to ensure that a non-U.S. Government customer pays a fair share of the nonrecurring investment costs incurred by the Department of Defense or a foreign government.

271.001 Definitions.

As used in this part: "Derivative Item" means an item derived from a Defense item which consists of common parts equal to, or more than, 10 percent of the Defense item.

"Direct Sale" means a commercial sale to a non-U.S. Government customer, either foreign or domestic, by a Defense contractor of products, technology, material, services, or development or production techniques that originally were developed, or improved using DoD appropriations or funds.

"DoD Focal Points"—See § 271.006.

"Foreign Military Sale (FMS)" means a sale, by the DoD, of Defense articles or Defense services to a foreign government or international organization under authority of the Arms Export Control Act.

"License" means the legal right to use technical data with or without compensation and with or without restrictions.

"Nonrecurring Costs (NC)" includes DoD costs as follows:

"(a) The costs funded by a Research, Development, Test, and Evaluation (RDT&E) appropriation to develop or improve the product or technology under consideration either through contract DoD or in-house effort. This includes costs of any engineering change proposal initiated before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned.

(b) The costs funded by either procurement or operation and maintenance (O&M) appropriations in support of production. These are one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. These NC include DoD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. This includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made in accordance with the FAR or DoD FAR Supplement.

"Non-U.S. Contractor" means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

"Pro Rata Recovery of Nonrecurring Costs" means equal distribution (proration) of a pool of nonrecurring costs to a specific number of units that benefit from the investment so that a DoD Component will collect from a customer a fair (pro rata) share of the investment in the product being sold.

"Royalty Fee" means a charge that is assessed for the use of DoD technical data for the purpose of manufacturing an item for a non-U.S. Government customer. The purpose of the charge is to recoup an appropriate share of the DoD NC incurred to develop the technical data and technology.

"Scheduled Nonrecurring Recoupment Charges" means charges published in a DoD Directive, Instruction, or Manual. Royalty fee percentages are published in DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology." Unit charges on specific items of equipment are published in DoD 5105.38–M, "Security Assistance Management Manual", and DoD 7290.3–M, "FMS Financial Management Manual."

"Special RDT&E and Nonrecurring Production Costs" means costs incurred at the request of, or for the benefit of, a foreign customer to develop a special feature or unique requirement.

"Technical Data" is defined in 227.471.

"Technology" means information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or material. The data may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice to implement DoD Directive 2140.2.

271.002 Policy.

(a) It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to products, and/or a fair price for its contribution to the development of related technology, when the products are sold, and/or when technology is transferred to a foreign government, international organization, foreign commercial firm, or domestic organization (hereafter referred to collectively as "customers") for coproduction, assembly or licensed production for the same or derivative items. This fair share is recovered through the assessment of nonrecurring recoupment charges or royalty fees established by the DoD.

(b) In selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under an FMS case where subsequent non-U.S. Government customers purchase the same specialized feature(s). The U.S. Government will normally not collect this recoupment on behalf of a foreign government beyond eight years from the date of the acceptance of the original DoD Offer and Acceptance (DD Form 1513) that included the nonrecurring investment.

271.003 Applicability.

(a) These policies apply to those products and technologies that were

developed with DoD appropriations or funds, and in special cases foreign customer funds, on which a nonrecurring recoupment charge or royalty fee has been or will be established.

(b) In the absence of an established recoupment amount, full recovery of the nonrecurring cost charge/royalty fee is required. It is incumbent upon the contractor to notify the U.S. Government of all pending commercial sales that may be subject to a recoupment charge so that the appropriate charge may be established and identified to the contractor.

(c) Revised charges shall be effective as of the date of revision and shall not be retroactively applied to past sales or to sales consummated by a written contract between the parties before the effective date of the revised charge.

(d) The policies do not apply when the sale is to a U.S. Government organization or when a contract is awarded by DoD under the Foreign Military Sales Program. When a sale is made under authority of the FMS Program, charges prescribed by DoD Directive 2140.2 shall be assessed by the DoD official responsible for the presentation of the DD Form 1513. Such charges shall not be included in the contract price.

217.004 Contract clause.

(a) To assure the recovery of an appropriate share of DoD investment in nonrecurring costs, the clause at 252.271–7001, "Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for Use of DoD Technical Data", shall be included in all RDT&E and production contracts and subcontracts of $1 million or more. This clause requires the contractor and qualifying subcontractors to pay to the U.S. Government the amounts established by the U.S. Government in the event of the contractor's commercial sale or transfer of products or related technology, that meet the criteria of 271.003.

(b) The determination of amount to be reimbursed to the U.S. Government for the commercial sale, coproduction or licensed production of products and components and for transfer of technology is provided at 252.271–7001. The recoupment charge is based upon information recorded in DoD accounting records or DoD budget justification documents and DoD estimates of quantities to be produced. The Military Department may consult with the contractor to obtain contractor marketing assessments. The charge will be established by the DoD in accordance with DoD Directive 2140.2. If an issue concerning the amount cannot be resolved, the Military Department will, within 90 days, request guidance from the Director, Defense Security Assistance Agency. The contractor may request that a charge be reviewed if significant changes in factors or assumptions have occurred.

(c) When a contractor negotiates the sale, coproduction or licensed production, or transfer of technology, of a DoD developed item or a derivative of a DoD developed item, the contractor will request the appropriate charge from the DoD Focal Point set forth in 271.006.

271.005 Waivers (including reductions).

(a) Waiver or reduction of the charges prescribed may be approved for a commercial sale based upon the same criteria for waivers granted under FMS or if the domestic sale is in the best interest of the United States to satisfy a demonstrable right of the manufacturer or the purchaser or to obtain advantage to the U.S. Government.

(b) *Request for Waivers.* (1) A waiver shall not be approved for a sale once consummated, unless the acceptance was conditional upon approval of the waiver. A waiver shall not be granted in connection with a direct commercial sale if such a waiver could not have been granted legally in connection with a sale made under the FMS Program.

(2) Requests for waivers associated with foreign sales should originate with the foreign government and shall be submitted to the Director of the Defense Security Assistance Agency. The request shall contain information regarding the extent of standardization and a statement of facts regarding the program, benefits expected and other justification, and any calculations necessary to quantify the waiver and the benefits to the U.S. Government. Waivers will be evaluated on a case-by-case basis only, and blanket waivers will not be considered. Any waiver approved for a direct commercial sale to a foreign government requires a certification by the Contractor that reductions have been passed on to the customer. The Director of the Defense Security Assistance Agency is the only waiver approval authority.

(3) Requests for waivers associated with domestic sales may originate with a DoD Component, or a defense contractor (Vice President or higher) and shall be submitted to the Under Secretary of Defense of Acquisition (USD(A)). The request shall contain information regarding the dollar value of the waiver, benefit to be derived by the Department of Defense, the names of foreign and domestic competitors, impact on the U.S. Government balance of payments, demonstrable rights of the manufacturer or purchaser, and any other justification for the waiver. Blanket waiver requests are discouraged, but may be granted in extraordinary circumstances.

271.006 Department of Defense (DoD) focal points.

DoD Focal Points maintain a central data base on established charges. The DoD Focal Points are as follows:

(a) *Army:*
U.S. Army Security Affairs Command
ATTN: AMSAC–RP
5001 Eisenhower Avenue
Alexandria, VA 22333–001

(b) *Navy:*
Commanding Officer
Navy International Logistics Control Office
700 Robbins Avenue (Code 10)
Philadelphia, PA 19111–5095

(c) *Air Force:*
Chief, Security Assistance Division
Deputy Comptroller Cost and Economics
Department of the Air Force
Washington, DC 20330–5018

Appendix I to Chapter 2 [Amended]

27. Appendix I–301 is amended by redesignating in the Instruction entitled "Block 19" the existing paragraphs (a) through (d) as paragraphs (b) through (d); and by adding a new paragraph (a); to read as follows:

I–301 Preparation Instructions.

* * * * *

Block 19—UNIT PRICE.

(a) The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government-Furnished Property (GFP). The unit price shall be obtained from section B of the contract or, if not available, the unit price shall be estimated. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an "E" after the unit price.

* * * * *

[FR Doc. 89–6769 Filed 3–21–89; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. 87–091; Notice 4K]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition for extension of time (Indiana).

SUMMARY: This is in response to a petition for an extension of time filed by the Indiana Bureau of Motor Vehicles (Indiana). Indiana cannot conform its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Indiana an extension of time, until July 1, 1990, to achieve compliance. Because Indiana has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Indiana's petition for an extension of time. Indiana has until July 1, 1990, to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Indiana's Petition

The Indiana Bureau of Motor Vehicles (Indiana) submitted a petition for an extension of time. In support of its petition, Indiana states that it has been redesigning and reformatting its title documents and making title-related computer changes. However, the form and computer changes require an augmentation of Indiana's current and impending budget. In addition, Indiana has a one year supply of the title documents. Indiana explains that replacement of these title documents with conforming forms "will create a severe financial burden." Until the current supply is depleted, Indiana states that it will require a separate odometer disclosure statement, which meets the Federal regulatory requirements, to accompany all nonconforming title documents. Because the current inventory of title documents will be depleted by July 1, 1990, and for other budgetary reasons, Indiana requests that it be granted an extension of time until July 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that Indiana has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

After the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, Indiana began to redesign its title documents and to make title-related computer changes. In addition, Indiana plans to require that a separate odometer disclosure statement, which meets the new regulatory requirements, be submitted with all nonconforming title documents. Budgetary constraints have hindered Indiana's progress.

In light of Indiana's past and planned actions, and in order to allow Indiana to expend its current supply of title documents, we grant Indiana's request for an extension of time until July 1, 1990, to revise its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on March 16, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89–6701 Filed 3–17–89; 2:28 pm]

BILLING CODE 4910–59–M

49 CFR Part 580

[Docket No. 87–09; Notice 4L]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition for extension of time (Massachusetts).

SUMMARY: This is in response to a petition for an extension of time filed by the Massachusetts Registry of Motor Vehicles (Massachusetts). Massachusetts cannot conform its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Massachusetts an extension of time, until October 1, 1989, to achieve compliance. Because Massachusetts has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Massachusetts' petition for an extension of time. Massachusetts has until October 1, 1989 to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Massachusetts' Petition

The Massachusetts Registry of Motor Vehicles (Massachusetts) submitted a petition for an extension of time. In support of its petition, Massachusetts

states that although the Massachusetts title statute will not be amended, other reasons necessitate an extension. Massachusetts has determined that new procedures and computer programming are required, especially with respect to the new odometer brands. Funding has been requested and is expected when the fiscal year 1990 budget is approved. In addition, recognizing that its current title does not meet the regulatory requirements, Massachusetts plans to redesign its title. Massachusetts has a thirty week supply of title documents, which do not fully conform to the new Federal requirements. Massachusetts explains that to destroy these documents is not desirable for economic and security reasons. Because the current inventory of title documents will be depleted by October 1, 1989, Massachusetts requests that it be granted an extension of time until that date.

NHTSA's Response to the Petition

NHTSA finds that Massachusetts has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, Massachusetts has reviewed its title documents and its titling procedures. Massachusetts has determined that the title documents do not conform to the new Federal requirements and plans to redesign them. In addition, Massachusetts is developing new titling procedures and re-programming its computer to ensure that new titles will include a "brand", a notation as to whether or not the odometer reading reflects the actual mileage that the vehicle has travelled or that the odometer reading reflects the mileage in excess of the designed mechanical limits of the odometer. Massachusetts expects that the new title documents and the computer changes will be ready within thirty weeks.

In light of Massachusetts' past and planned actions, and in order to allow Massachusetts to expend its current supply of title documents, we grant Massachusetts' request for an extension of time until October 1, 1989 to revise its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on March 16, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-6700 Filed 3-17-89; 2:27 pm]

BILLING CODE 4910-59-M

---

49 CFR Part 580

[Docket No. 87-09; Notice 4M]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition for extension of time (Minnesota).

SUMMARY: This is in response to a petition for an extension of time filed by the Minnesota Department of Public Safety (Minnesota). Minnesota cannot conform its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Minnesota an extension of time, until July 1, 1990, to achieve compliance. Because Minnesota has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Minnesota's petition for an extension of time. Minnesota has until July 1, 1990 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Minnesota's Petition

The Minnesota Department of Public Safety (Minnesota) submitted a petition for an extension of time. In support of its petition, Minnesota states that it has been redesigning its title to include what it believes to be the new odometer disclosure language and that it plans to include additional reassignments on the title. Minnesota has also drafted statutory changes. These changes will eliminate riders (transfer attachments) and, when there is a lien, these changes will allow the State to issue the title document to the registered owner, not the secured party. The legislative package will be introduced when the new legislative begins in January 1990. In addition, Minnesota has 1.5 million nonconforming titles on hand. Minnesota explains that replacing "these documents with conforming titles prior to exhausting this supply would create a severe financial burden." Because the current inventory of title documents will be depleted by July 1, 1990, Minnesota requests that it be granted an extension until that date.

NHTSA's Response to the Petition

NHTSA finds that Minnesota has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the new Federal regulations, Minnesota has drafted legislative proposals to facilitate implementation and deter odometer fraud. The title will be issued to the registered owner, even when there is a lienholder. Separate reassignment documents will be eliminated. In addition, Minnesota has redesigned its title documents to include some of the new odometer disclosure language. However, in order to conform with the Federal requirements, Minnesota must make additional revisions to the title document. The State will be notified by letter of the changes needed.

In light of Minnesota's past and planned actions, and in order to allow Minnesota to expend its current supply of title documents, we grant Minnesota's

request for an extension of time until July 1, 1990, to revise its laws and its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on March 16, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-6699 Filed 3-17-89; 2:26 pm]

BILLING CODE 4910-59-M

49 CFR Part 580

[Docket No. 87-09; Notice 4N]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition for extension of time (Missouri).

SUMMARY: This is in response to a petition for an extension of time filed by the Missouri Department of Revenue (Missouri). Missouri cannot conform its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Missouri an extension of time, until January 1, 1990, to achieve compliance. Because Missouri has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Missouri's petition for an extension of time. Missouri has until January 1, 1990 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Missouri's Petition

The Missouri Department of Revenue (Missouri) submitted a petition for an extension of time. In support of its petition, Missouri states that it created a task force in March 1987 to address problems that could result from the implementation of the Truth in Mileage Act of 1986. The task force studied various types of titles and met with vendors to discuss the availability of security features. In addition, Missouri states that it has designed a new title that it believes conforms to the new Federal requirements. Missouri explains that it will retain most of the security features of its current title and increase the security of the paper. Due to funding and vendor constraints, the title documents will not be received until mid-summer. Extensive computer changes are needed. In addition, Missouri asserts that it has introduced legislation to bring the Missouri statutes into conformity with the Federal requirements. The proposed legislation defines "transferor", "transferee", and "mileage". It would also permit Missouri to brand the title, to include a notation as to whether or not the odometer reading reflects the actual mileage that the vehicle has traveled or the mileage in excess of the designed mechanical limits of the odometer. The effective date of this legislation, if passed this session, would be August 28, 1989. Finally, Missouri has approximately 1,119,000 titles currently on hand or on order subject to contract, purchased at a cost of $69,000. Therefore, Missouri requests an eight month extension of time, until January 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that Missouri has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, Missouri has redesigned its title and reassignment documents. However, in order to conform to the Federal requirements, Missouri must make additional revision to these documents. The State will be notified by letter of the changes needed. In addition, legislative proposals have been drafted and submitted to the Missouri legislature.

In light of Missouri's past and planned actions, and in order to allow Missouri to expend its current supply of title documents, we grant Missouri's request for an extension of time until January 1, 1990, to revise its laws and its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on March 16, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-6702 Filed 3-17-89; 2:29 pm]

BILLING CODE 4910-59-M

49 CFR Part 580

[Docket No. 87-09; Notice 40]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition for extension of time (New Jersey).

SUMMARY: This is in response to a petition for an extension of time filed by the New Jersey Department of Law and Public Safety, Division of Motor Vehicles, (New Jersey). New Jersey cannot conform its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant New Jersey an extension of time, until May 1, 1990, to achieve compliance. Because New Jersey has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted New Jersey's petition for an extension of time. New Jersey has until May 1, 1990 to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief

Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

New Jersey's Petition

The New Jersey Department of Law and Public Safety, Division of Motor Vehicles, (New Jersey) submitted a petition for an extension of time. In support of its petition, New Jersey states that it has established implementation and planning groups to accomplish compliance with the Federal requirements. These groups have begun to redesign title documents and reassignment forms and they have had discussions with the potential vendors of these documents. These groups have been meeting with the New Jersey enforcement community and auto dealers to ensure that the new program is instituted with minimal impact. Currently, New Jersey utilizes two processing systems to issue titles. Due to the changes in the title documents, both systems need to be re-programmed. Design, programming, documentation, testing, and implementation of the new systems will take approximately one year. Finally, New Jersey states that its current inventory of titles will last until April 30, 1990. For these reasons, New Jersey requests that it be granted an extension of time until May 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that New Jersey has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, New Jersey has formed groups to redesign title documents, reprogram its computer titling systems, and train dealers, leasing companies, and its own personnel. New Jersey expects that these programs will be completed and the new documents will be ready for issuance by May 1, 1990.

In light of New Jersey's past and planned actions, and in order to allow New Jersey to expend its current supply of title documents, we grant New Jersey's request for an extension of time until May 1, 1990, to revise its title documents to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on March 16, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89–6703 Filed 3–17–89; 2:30 pm]

BILLING CODE 4910–59–M

---

49 CFR Part 580

[Docket No. 87–09; Notice 4P]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition for extension of time (New Mexico).

SUMMARY: This is in response to a petition for an extension of time filed by the New Mexico Taxation and Revenue Department (New Mexico). New Mexico cannot conform its title documents and its laws to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant New Mexico an extension of time, until July 1, 1990, to achieve compliance. Because New Mexico has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted New Mexico's petition for an extension of time. New Mexico has until July 1, 1990 to revise its title documents and its laws to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

New Mexico's Petition

The New Mexico Taxation and Revenue Department (New Mexico) submitted a petition for an extension of time. In support of its petition, New Mexico states that it has worked for many months to develop a title document to meet the new requirements. New Mexico's title now includes a reference to the Federal law and notes that a fraudulent odometer disclosure statement may result in fines and/or imprisonment. In addition, New Mexico has added a space for the buyer to sign the disclosure. New Mexico explains that it has redesigned its title document to incorporate what it believed was the necessary information required by law and purchased a one year supply of these documents. However, New Mexico recognizes that its title may not meet the regulatory requirements and anticipates changing its laws concerning title and registration procedures. New Mexico plans an awareness campaign to educate its dealers and the public about the new disclosure requirements. Therefore, New Mexico requests that it be granted an extension of time until July 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that New Mexico has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

For many months, New Mexico has been working to develop a title document to incorporate what it believed was all the necessary information required by the Act and NHTSA's regulation. New Mexico's title document was redesigned to include a reference to the Federal law and penalties. In addition, it includes a space for the buyer to sign the disclosure. However, in order to conform to the Federal requirements, New Mexico must make additional revisions to the title document. The State will be notified by letter of the changes needed.

In light of New Mexico's past and planned actions, and in order to allow New Mexico to expend its current supply of titles, we grant New Mexico's request for an extension of time until July 1, 1990, to revise its title documents and its laws to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on March 16, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-6704 Filed 3-17-89; 2:31 pm]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 54, No. 54
Wednesday, March 22, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

[DA-89-016]

Milk in the Southwest Plains Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of March through July 1989 a portion of the "producer" definition of the Southwest Plains order. Such provision was suspended for February-July 1988 and April-July 1987. The provision proposed for suspension prevents dairy farmers from being considered producers under the order during the months of February-July if they have not sufficiently supplied the market during the previous fall months. The suspension was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association that represents producers who supply the Southwest Plains market. AMPI contends that the action is necessary to permit the pooling of milk of dairy farmers who are currently supplying the fluid milk needs of distributing plants.

DATE: Comments are due on or before March 29, 1989.

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

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

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of March-July 1989:

In § 1106.12, paragraph (b)(5) in its entirety.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Associated Milk Producers, Inc. (AMPI), a cooperative association that represents dairy farmers who supply the Southwest Plains market, has requested that a portion of the producer definition be suspended during March-July 1989. The provision proposed for suspension prevents dairy farmers from being considered producers under the order during months when supplies are abundant if they have not supplied the market during the previous fall months when fluid milk supplies are seasonally smaller. Specifically, the order provides that a dairy farmer cannot be a producer during the months of February-July unless more than two-thirds of the producer's milk was pooled and priced under the order during each of the immediately preceding months of September-November. This provision was suspended for February-July 1988 and April July 1987.

AMPI contends that the suspension is necessary to permit the pooling of milk of dairy farmers in southern Oklahoma under the Southwest Plains order. AMPI indicates that such dairy farmers were formerly associated with the Texas Federal milk order but are currently supplying the fluid milk needs of distributing plants in the Oklahoma City area. AMPI contends that the shift in supply has occurred because milk is no longer needed in the Texas market as a result of continued increases in Texas production. Consequently, AMPI indicates that almost 10 million pounds of southern Oklahoma production, that was delivered to Oklahoma City area distributing plants in February, was not pooled under the Southwest Plains order since such milk was not sufficiently associated with such market during the previous fall months. Absent a suspension action, AMPI indicates that such producers will suffer a considerable economic loss by not sharing in the Southwest Plains order blend price. AMPI contends that a suspension action will allow these producers to have their milk priced under the order where the milk is delivered for fluid use.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

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

Signed at Washington, DC on March 20, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-6866 Filed 3-21-89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563c and 571

[No. 89-772]

Investment Portfolio Policy and Accounting Guidelines

Dated: March 8, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Availability of additional information.

SUMMARY: The Federal Home Loan Bank Board ("Board") is issuing for public information a comment letter received from the staff of the Financial Accounting Standards Board ("FASB") along with subsequent correspondence with the staff of the FASB related to Board Resolution No. 88-460 Investment Portfolio Policy and Investment Guidelines in order to inform interested and affected persons of the position of the staff of the FASB regarding the accounting for certain investment securities transactions.

FOR FURTHER INFORMATION CONTACT: W. Barefoot Bankhead, Professional Accounting Fellow, (202) 331-4585, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006, or Gary Jeffers, Staff Attorney, (202) 906-6457, or Julie L. Williams, Deputy General Counsel, (202) 906-6459, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board wishes to make readily available to the public a comment letter received from the staff of the Financial Accounting Standards Board and related correspondence. The comment letter and subsequent, clarifying correspondence are re-printed as attachments so that interested and affected persons will be aware of the position of the staff of the FASB regarding the accounting for certain investment securities transactions.

The FASB staff comment letter of September 20, 1988 was in response to the Board's request for comment on Resolution No. 88-460 dated June 9, 1988. *See* 51 FR 23244 (June 21, 1988). In the September 20, 1988 letter, the FASB staff, *inter alia*, traced the history of accounting for investment and other securities and discussed the relevant criteria for accounting for certain investment securities. The letter further discussed the current accounting for certain investment securities.

In the attached letter dated November 23, 1988, the Board requested clarification of various issues raised by the September 20, 1988 letter. The FASB staff responded to each of the Board's inquiries in the attached letter of December 21, 1988. The FASB staff recognizes that new accounting principles may emerge as new business practices develop. When such new business practices develop, current accounting literature may require modification through due process.

The Board will consider the FASB staff letters, along with all other comment letters received regarding Investment Portfolio Policy and Accounting Guidelines, in going forward with its proposed statement of policy.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

Financial Accounting Standards Board

September 20, 1988.

Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board,

1700 G Street, NW., Washington, DC 20552.

RE: Investment Portfolio Policy and Accounting Guidelines

Dear Sir: The staff of the Financial Accounting Standards Board (FASB) appreciates the opportunity to submit this letter of comment on the proposed Statement of Policy entitled "Investment Portfolio Policy and Accounting Guidelines." In general, the staff believes that the proposed Statement of Policy contains useful guidance for determining the classification of and accounting applicable to certain investment securities. However, we believe that this guidance should be considered as regulatory accounting practice (RAP) to the extent that it deviates from standards established by private-sector standard-setting due process (including those standards that may be established in the future).

We commend the FHLBB's objective to require all financial institutions under its regulatory authority to be on a GAAP basis of accounting no later than December 31, 1993. Further, we support and encourage interim steps, such as this proposal, toward applying GAAP in this area. We also note that the AICPA currently is developing a Statement of Position on this subject that would be applicable to all financial institutions, including thrift institutions. Therefore, we believe that the FHLBB will best achieve its objectives related to classification of and accounting for certain investment securities by cooperating with the AICPA, and we encourage you to provide assistance to the AICPA in the development of its Statement of Position.

Intent and Ability to Hold to Maturity

With regard to the FHLBB's proposed Statement of Policy, the staff is concerned by the use of "intent and ability to hold for the foreseeable future" as the criterion for classification of a security as an investment and the resulting measurement at amortized historical cost. The staff believes that accounting literature focuses primarily on the intent and ability to hold investment securities *to maturity*.

In discussing accounting for investment securities, the AICPA's Audit and Accounting Guide, *Savings and Loan Associations*, page 21, states: "Since changes in the market price of government obligations are usually related to fluctuations in interest rates, no allowance for a decline ordinarily is necessary if management intends to and has the ability to hold the securities to maturity." The Guide goes on to state on the same page, "In determining whether there is permanent impairment, an association should consider various factors, including management's intentions, its ability to hold until maturity, supervisory directives, regulatory requirements, and other circumstances."

The AICPA Industry Audit Guide, *Audits of Banks*, states, on page 30, "If the debt obligations of others are held to maturity, they will generally be redeemed at face value; therefore, they are carried at cost. If they have the ability and intent to hold these securities on a long-term basis, banks do not customarily provide for unrealized declines in their market value resulting from interest rate fluctuations." Finally, FASB Statement No. 65, *Accounting for Certain Mortgage Banking Activities* (as amended by FASB Statement No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases*), which is an extraction of already promulgated literature, states in paragraph 6:

A mortgage loan or mortgage-backed security transferred to a long-term-investment classification shall be transferred at the lower of cost or market value on the transfer date. Any difference between the carrying amount of the loan or security and its outstanding principal balance shall be recognized as an adjustment to yield by the interest method. A mortgage loan or mortgage-backed security shall not be classified as a long-term investment unless the mortgage banking enterprise has both the ability and the intent to hold the loan or security for the foreseeable future or until maturity. [Footnote reference omitted.]

Statement of Position 74-12, *Accounting Practices in the Mortgage Banking Industry*, which is one of the source documents from which Statement 65 was extracted, stated in paragraph 19:

Determination and verification of a mortgage banker's intent to carry mortgage loans as a long-term investment will always be a difficult judgment. The Division believes that the following conditions, as they existed at the time the investment decision was made, should be considered in verifying a mortgage banker's intent to carry mortgage loans as a long-term investment:

(a) The loans are to be segregated in the accounting records and reports of the company.

(b) There is documentary evidence of a corporate decision to hold such loans to maturity or at least for an extended term.

(c) The loans will be classified as non-current assets if the company's balance sheet is classified.

(d) The mortgage banker has the financial strength to carry such investments for extended periods. Evidence of such financial strength would be an amount of equity and long-term borrowings in excess of the carrying value of such investments. A non-revocable line of credit, effective for the projected holding period from a substantial financial institution would also constitute evidence of substantial financial strength.

The Exposure Draft of Statement 65 used the term *extended period*. This was changed in the final deliberations by the FASB in order to clarify the meaning.

While the term *for the foreseeable future* is used in Statement 65, we believe that the Board's intention and the substance of the literature require much more than the absence at the present time of a specific plan on the part of management to sell a particular security; in fact, we believe it requires a *positive intent* and ability on the part of management to hold a security to maturity. We also do not believe that a positive intent to hold investment securities to maturity subject to external factors outside management's control meets this standard. The basis for ignoring market values lower than cost is a circumstance that will result in no loss being experienced by the enterprise.

Two simple examples may help to clarify the distinction. If management's intentions to hold a security to maturity are uncertain or there is a 50 percent chance of sale, we believe that it is not appropriate to carry such an investment security at amortized cost. As another example, if an enterprise maintains a dynamic hedging program in which changes in external variables such as the interest rate require that securities be purchased or sold in order to maintain an effective hedge, we believe that the objective contradicts any representation that the entity possesses the intent and ability to hold the securities to maturity or, indeed, for any specific period.

If management lacks the positive intent and ability to hold investment securities to maturity, we believe such assets should be carried either at the lower of cost or market or at market. We recommend that the proposed Investment Portfolio Policy and Accounting Guidelines be changed to clarify that absence of an immediate plan to sell a security is not a sufficient basis for the use of amortized cost.

Other Comments

The staff recommends that the following changes to the proposed amendment of Part 571, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, be made in order to conform to GAAP.

With regard to Part 571.19(d)(1), FASB Statement No. 80, *Accounting for Futures Contracts*, may also affect the policy statement of an institution as it relates to the classification of investments, assets held for sale, and securities held for trading and should be included in the list of relevant GAAP literature.

With regard to Part 571.19(d)(2) we recommend the following:

a. For marketable equities classified as investment or held for sale, the accounting be changed to "Lower or aggregate cost or market"

b. The category of investment securities held for sale be expanded to include not only those securities that are held for sale, but also all securities for which management does not intend to hold the security to maturity nor to hold the security for trading

c. Footnote 4 be changed to read "Accumulated changes in the valuation allowance for marketable equity securities portfolios should be included in the equity section of the balance sheet and shown separately"

d. Footnote 6 be modified to read "losses are recognized in the determination of net income."

If you would like to discuss these matters further, please contact me. The staff of the FASB would be willing to meet with you or your staff to discuss our concerns.

Sincerely,

Timothy S. Lucas,

Director, Research and Technical Activities.

Federal Home Loan Bank Board

November 23, 1988.

Mr. Timothy S. Lucas, *Director of Research and Technical Activities, Financial Accounting Standards Board, 401 Merritt #7, Norwalk, Connecticut 06856–5116.*

Dear Mr. Lucas: On behalf of the Federal Home Loan Bank Board (the "Board"), I wish to express our appreciation for the Financial Accounting Standard Board's (the "FASB") response to our Proposed Investment Portfolio Policy and Accounting Guidelines.

The Board takes seriously its commitment to require all institutions which file with the Bank Board to report in accordance with generally accepted accounting principles ("GAAP"). To that end, we are proud to have focused attention on an area of GAAP we believe to have been variously applied in financial statements throughout financial industries. The Board also acknowledges the authority of the FASB in establishing GAAP and would like to reiterate its original objective of clarification, not creation of GAAP regarding securities (including loan) activities.

The Board acknowledges the FASB staff's interpretation of current GAAP and trusts that the FASB will communicate its views to accounting practitioners and appropriate bodies of *all* affected industries such that uniform interpretation, application and enforcement of GAAP in this area may occur. Based upon the comment letters we have received and our own research, we cannot over-emphasize the extent to which financial entities in many industries and their practitioners have focused upon the concept of "foreseeable future" (as included in literature reviewed by the FASB) and the lack of a current intent to sell securities as the basis for the use of amortized cost accounting. We believe the FASB's clarification of GAAP as expressed in your response letter will result in significant changes in reporting practices for many industries. An inadequate or uneven communication of the FASB's clarification to practitioners and industries could lead to a lack of comparability of the financial statements of financial institutions, an effect which surely the FASB does not condone. Thus, we are extremely concerned about how the FASB's clarification will be communicated to these industries and the accounting profession.

We believe further explanation is necessary to ensure the appropriate adoption of GAAP for securities activity. Your expressed willingness to provide further information regarding the FASB's letter is greatly appreciated.

Does the letter from the FASB staff represent the consensus views of the FASB board members?

Where does the FASB's letter fall within the hierarchy of GAAP? Is this question moot because the interpretations presented are reiterations of current GAAP literature which has gone through the appropriate due process?

What is the impact of the FASB's conclusions on the current draft of the AICPA's Statement of Position, "Characteristics Distinguishing Investment Activities of Savings Institutions"?

Will the conclusions in your letter be formally communicated to the American Institute of Certified Public Accountants (the "AICPA")? If so, what additional guidance has been or will be provided to the AICPA in ensuring practice consistent with GAAP literature as reiterated by the FASB for *all* industries?

Are the terms "security" and "investment security" used interchangeably throughout the document? How is the term "security" defined?

If the premise for cost accounting is a "circumstance that will result in no loss experienced by the enterprise", then should an entity which has the intent and ability to hold securities until market approximates or exceeds cost (assuming no permanent impairment) be able to record these securities at cost?

Paragraph 7 of Statement of Financial Accounting Standards No. 65 indicates that mortgage loans and mortgage-backed securities held for long term investment should be written down to the "expected collectible amount" when an "other than temporary" impairment exists. Please reconcile this theory to the lower of cost or market or mark to market guidance provided in your letter.

Can active asset management strategies which purport to maintain objectives such as a current coupon portfolio or a duration matched portfolio (e.g., "gains trading" or "par capping" stragegies) ever be accounted for at cost? Does the last sentence beginning on page three of your letter preclude carrying these securities at amortized cost when a financial entity employs these strategies?

You have indicated that a threshold as low as "50 percent chance of sale" is too high a threshold to support amortized cost accounting for securities. What threshold would support amortized cost accounting for securities? What are the pertinent factors used to determine when the threshold is exceeded?

What is the theoretical premise for the

distinctions between assets accounted for at market or the lower of cost or market?

Doesn't paragraph 14 of Statement of Financial Accounting Standards No. 12 allow savings institutions to record equity securities included in trading accounts at mark to market?

We look forward to, and very much appreciate, your responses to the above issues.

Sincerely,

M. Danny Wall,

Chairman.

December 21, 1988.

Mr. M. Danny Wall,
Chairman, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

RE: Proposed FHLBB Regulation, Investment Portfolio Policy and Accounting Guidelines

Dear Mr. Wall: I am writing in response to your letter of November 23 about the classification of securities as investment or trading assets. The FASB staff shares your concern that generally accepted accounting principles (GAAP) be applied on a consistent basis across all industries engaged in similar transactions for similar purposes.

Because of that concern, my September 20, 1988 letter commenting on the Federal Home Loan Bank Board's (FHLBB) proposed regulations, Investment Portfolio Policy and Accounting Guidelines, suggested that the FHLBB will best achieve its objectives related to consistent classification of and accounting for certain investment securities by working with the AICPA in the development of its draft Statement of Position (SOP) on distinguishing investment activities of savings institutions. A second project currently underway at the AICPA, also of interest to the FHLBB, is a project to update and reissue the Audit and Accounting Guide, *Savings and Loan Association* (the Guide).

Under present accounting literature, the accounting for a security is a function of the business purpose for acquiring the security. As my earlier letter indicated, we believe that carrying a debt security at cost is appropriate under GAAP only if management has the intent and ability to hold that security to maturity. When the business purpose for which the security has been acquired is other than to hold the security to maturity (for example, for resale at some future date), then the accounting should reflect that business purpose.

Accounting is not static and new accounting practices emerge, especially as new business practices develop. When this occurs, change sometimes requires modifications of the accounting literature through due process, such as that currently in progress through the AICPA project to distinguish investment activities of savings institutions, or through an FASB project.

The balance of this letter will respond to the specific issues raised in your letter. I have numbered our responses to conform to the order of your questions.

1. All significant comment letters on accounting matters written by the FASB staff, including my September 20, 1988 letter and this letter, are reviewed by Board members prior to being sent; such letters are not sent if there is significant disagreement with the substance of the letter. However, official positions of the FASB are determined only after extensive due process and deliberations.

2. The letter should be regarded as the FASB staff's interpretations of existing GAAP except to the extent that the staff quotes directly from GAAP literature. Within the text of the *AICPA Professional Standards*, the letter would fall under AU Section 411.05d, other accounting literature. Without due process, the FASB cannot change existing GAAP.

3. SOPs are issued by the Accounting Standards Executive Committee (AcSEC), which is the senior accounting technical committee of the AICPA. Under AICPA procedures, all SOPs must be reviewed prior to issuance by the FASB at a public meeting with the Board voting not to object to issuance. The Board may make its vote contingent on certain modifications of the SOP. In the case of the draft SOP, *Characteristics Distinguishing Investment Activities of Savings Institutions*, a task force composed of representatives of several AICPA industry committees is working to develop the draft. AcSEC has not yet approved a draft, and a draft has not yet been submitted to the FASB for review.

4. The FASB staff will formally communicate its views to AcSEC and the task force developing the draft SOP by providing them with copies of this letter and my earlier letter to the FHLBB.

5. By "security" and 'investment security," my letter meant those assets that are classified in depository institution financial statements in either the trading account or other investment accounts and valued in a manner consistent with management's intended holding period. The usage is the same as that in the Guide.

6. The Guide, on page 21, addresses investment securities and states that, "no allowance for a decline [in market value] ordinarily is necessary if management intends to and has the ability to hold the securities to maturity." As noted above, in the staff's view, GAAP does not permit amortized cost accounting for investments that management is holding for other purposes. We also note that compliance by the debtor with the terms of the debt is the only presumption necessary to avoid realizing a loss if held to maturity, while the notion of holding a presumption of favorable future market movement. GAAP typically does not presume favorable future market movements.

7. Paragraph 7 of FASB Statement No. 65, *Accounting for Certain Mortgage Banking Activities*, addresses other-than-temporary declines in value of mortgage loans and mortgage-backed securities carried at amortized cost because of management's intent and ability to carry them to maturity. When those declines in value are judged to have occured because collection in full of the amounts due is not expected, mortgage loans and mortgage-backed securities should be reduced to the expected collectible amount. Mortgage-backed securities which are expected to be sold prior to maturity are treated differently, they are to be carried at the lower of cost or market in accordance with paragraph 4 of Statement 65.

8. Current GAAP, in our view, does not permit securities to be carried at amortized cost when financial strategies such as those described in your letter are employed.

9. The percentage was provided only as an example. Existing authoritative accounting literature requires that management must have both the intent and the ability to carry a security to maturity for it to be accounted for at amortized cost. The literature does not attemp to quantify the probability attached to intent.

10. Present practice is to carry at market those securities held for immediate sale when the primary objective is to earn a dealer's spread between the bid and asked prices. When the primary objective is to realize a holding gain, assets held for indefinite periods of time (and not intended to be held to maturity) are carried at the lower of cost or market.

11. On page 20, the Guide, which establishes specialized industry practice for savings and loan associations, requires that equity investments held by savings institutions be accounted for in accordance with FASB Statement No. 12, *Accounting for Certain Marketable Securities*. Consequently, savings institutions that hold equity securities in trading accounts are not exempt from the requirements of Statement 12 to report marketable securities at the lower of cost or market unless other specialized industry accounting is established for them. Specialized industry practice my result from the SOP currently being drafted by the AICPA. Alternatively, where savings institutions engage in trading activities similar to those engaged in by banks and broker/dealers, it may be appropriate to apply, by analogy, the specialized industry accounting from those industries.

As mentioned above, the views expressed in this and other letters written by the FASB staff represent the views of the staff except to the extent they are direct quotes from authoritative accounting pronouncements. Official positions of the FASB are determined only after extensive due process and deliberations.

We hope that this response is helpful in clarifying the views expressed in my September 20 letter. If you have further questions, I and other members of the staff are available to meet with you or your staff to discuss this subject further.

Sincerely,

Timothy S. Lucas,

Director, Research and Technical Activities.

[FR Doc. 89-6597 Filed 3-21-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-05-AD]

Airworthiness Directives; British Aerospace (BAe) PLC Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) PLC Jetstream Model 3101 airplanes, which would install electrical circuit breakers in the 26 volt a.c. inverter output cables. The inverters are capable of fault currents in excess of the wire cable rating. Such currents will destroy the electrical cable insulation resulting in possible fire and possible loss of the airplane.

DATES: Comments must be received on or before May 22, 1989.

ADDRESSES: BAe Mandatory Alert Service Bulletin (ASB) Jetstream 24-A-JA7672A, dated November 2, 1988, and ASB Erratum No. 1, dated December 2, 1988, applicable to this AD may be obtained from British Aerospace, Inc., Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-05-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m. Monday through Friday, holidays expected.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Division, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30 or Mr. John P. Dow, Sr., FAA, Project Support Section-Foreign ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule 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 triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-05-Ad, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

British Aerospace became aware that the main and essential 26 volt a.c. inverters on Model 3101 airplanes are not provided with internal fuses for the protection of the output cables from excessive currents due to a ground fault. Each inverter can deliver a ground fault current in excess of 18 amperes. Thus an external circuit breaker is required for the protection of the output cable and adjacent airplane wiring. As a result, BAe has issued Mandatory Alert Service Bulletin (ASB) Jetstream 24-A-JA7672A, dated November 2, 1988, and ASB Erratum No. 1, dated December 2, 1988, which specify the installation of a 7.5 ampere circuit breaker in-line with each of the 26 volt a.c. inverter output cables. The Civil Airworthiness Authority-United Kingdom (CAA-UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the UK, has classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under CAA-UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of BAe ASB Jetstream 24-A-JA7672A, dated November 2, 1988, and ASB Erratum No. 1, dated December 2, 1988, and the mandatory classification of this ASB by the CAA-UK. Based on the foregoing, the FAA believes that the condition addressed by ASB 24-A-JA7672A is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require the installation of individual 7.5 ampere circuit breakers adjacent to the main and essential 26 volt a.c. inverters in-line with each inverter output cable on Jetstream Model 3101 airplanes in accordance with the aforementioned Alert Service Bulletin and Erratum.

The FAA has determined there are approximately 96 airplanes affected by the proposed AD. The cost of modifying the airplanes per the proposed AD is estimated to be $520 (13 workhours) per airplane. The total cost is estimated to be $49,920 to the private sector. Therefore, the cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant impact on any small entities operating these airplanes. The regulations proposed herein would not have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, or a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provision under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR 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); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace: Applies to Jetstream Model 3101 (Serial number 696 through 794, 796 through 799, 801 through 804, 806 through 809, 811 through 813, 815 through 817, and 820) airplanes certificated in any category. Compliance: Required within the next 75 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent fire or damage to the airplane electrical system, accomplish the following:

(a) Install a 7.5 ampere circuit breaker in accordance with British Aerospace (BAe) Mandatory Alert Service Bulletin (ASB) Jetstream 24–A–JA7672A, dated November 2, 1988, and BAe ASB Erratum No. 1, dated December 2, 1988, in the electrical power output line of: (1) The main 26 volt a.c. inverter; and (2) The essential 26 volt a.c. inverter.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU–100, Europe, Africa, Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to British Aerospace, Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; or may exmine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 9, 1989.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6643 Filed 3–21–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–ANE–43]

Airworthiness Directives; General Electric Company (GE) CF6–80A/A1/A2/A3 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that requires installation of fire shields to the upper surface of the accessory compartment in the area of the low pressure turbine (LPT) recoup manifold on GE CF6–80A/A2 turbofan engines and to the axial fuel supply manifold in the area of the LPT recoup manifold on GE CF6–80A1/A3 turbofan engines. The proposed AD is needed to provide increased fire protection in the event of a fire escaping from the LPT recoup manifold which could lead to fuel leakage and possible engine fire.

DATES: Comments must be received on or before May 5, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88–ANE–43, 12 New England Executive Park, Burlington, Massachusetts 01803. or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket No. 88–ANE–43.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletins (SB) may be obtained from General Electric Company, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined in the Regional Rules Docket.

A copy of the SB's is contained in Rules Docket No. 88–ANE–43 at the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7096.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket 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 FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 88–ANE–43". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to adopt a new AD requiring installation of fire shields to the upper surface of the accessory compartment in the area of the LPT recoup manifold on GE CF6–80A/A2 turbofan engines and to the axial fuel supply manifold in the area of the LPT recoup manifold on GE CF6–80A1/A3 turbofan engines.

There has been one event involving a CF6–80A engine where an external fire resulted from a Number 5R bearing failure. The fire progressed through the Number 5R bearing sump and the LPT recoup manifold, impinged on and entered into the accessory compartment. High temperatures in the accessory compartment damaged fuel carrying lines, resulting in fuel leakage which sustained the fire. The CF6–80A2 design is similar to that of the CF6–80A.

The FAA has also determined that the axial fuel supply manifold on CF6–80A1/A3 engines is located in the same area as the LPT recoup manifold and like the CF6–80A, is also susceptible to fire implement and possible fuel leakage.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD requires installation of fire shields to the upper

surface of the accessory compartment in the area of the LPT recoup manifold on CF6–80A/A2 engines and to the axial fuel supply manifold in the area of the LPT recoup manifold on CF6–80A1/A3 engines.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves approximately 400 engines and the operators cost per engine would be negligible since the manufacturer has agreed to give a parts and labor credit allowance as noted in the SB's. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using aircraft in which CF6–80A/A1/A2/A3 engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) 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 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CF6–80A/A1/A2/A3 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To provide increased fire protection in the event of a fire escaping from the LPT recoup manifold which could lead to fuel leakage and possible engine fire, accomplish the following prior to August 31, 1989:

(a) Install on CF6–80A/A2 engines, two zirconia-coated fire shields, Part Numbers (P/N) 1306M85G01 and 1306M86G01, in accordance with GE CF6–80A series Alert Service Bulletin (ASB) A72–512, Revision 1, dated May 24, 1988.

(b) Install on CF6–80A1/A3 engines, fire shield, P/N 1306M84P02, in accordance with GE CF6–80A series ASB CF6–80A A72–510, Revision 2, dated November 14, 1988.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of the AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massashusetts 01803.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office may adjust the compliance time specified in the AD.

Issued in Burlington, Massachusetts, on March 13, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–6644 Filed 3–21–89; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 89–ASO–7]

Proposed Alteration of VOR Federal Airway V–437—FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V–437 located in the vicinity to Melbourne, FL. The current alignment of V–437 is a dogleg segment to the west between Melbourne and Pahokee, FL. This action would realign that segment as a direct/straight-line airway between those points, thereby saving fuel. This action improves the traffic flow in the Miami terminal area.

DATES: Comments must be received on or before May 8, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 89–ASO–7, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASO–7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with

FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–437 by realigning a segment between Melbourne and Pahokee, FL. Pilots usually request a direct routing between these points. Since there is no operational advantage in having aircraft flying that dogleg, controllers permit direct routing between Melbourne and Pahokee. This action, therefore, would reduce controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed 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, when promulgated, 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, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) 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 Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–437 [Amended]

By removing the words "INT Pahokee 352° and Melbourne, FL, 217° radials; Melbourne" and substituting the words "Melbourne, FL"

Issued in Washington, DC, on March 14, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–6645 Filed 3–21–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Proposed Customs Regulations Amendment Relating to the Customs Field Organization—Front Royal, VA (Virginia Inland Port)

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

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by establishing a customs port of entry at the Virginia Inland Port (VIP) near Front Royal in the Norfolk, Virginia, Customs District of the Southeast Region. The change is being proposed as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

DATE: Comments must be received on or before April 21, 1989.

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

FOR FURTHER INFORMATION CONTACT: Joseph E. O'Gorman, Office of Inspection and Control (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service field organization currently consists of seven geographical regions further divided into districts with ports within each district. Customs ports of entry are locations (seaports, airports, or land border ports) where Customs officers or employees are assigned to accept entries of merchandise, collect duties, clear passengers, vehicles, vessels, and aircraft, examine baggage, and enforce the Customs, and related laws.

The Virginia Port Authority filed an application with Customs requesting establishment of a new Customs port of entry near Front Royal, Virginia. A review of the application therefor, and related materials, has confirmed that the proposed port appears to meet the minimum Customs criteria for establishing ports of entry. The applicable standards, published as T.D. 82–37 in the **Federal Register** on March 9, 1982 (47 FR 10137), and modified by T.D. 86–14, published in the **Federal Register** on February 5, 1986 (51 FR 4559), and by T.D. 87–65, published in the **Federal Register** on May 4, 1987 (52 FR 16328), list 2,500 formal entries per year as the minimum potential Customs workload for establishing a port. T.D. 87–65 specifically requires a commitment by an applicant seeking port status by satisfying the cargo workload standard, to make optimal use of electronic data transfer capability to permit integration with Customs Automated Commercial System (ACS). The Virginia Port Authority has made this commitment.

The geographical limits of the proposed port of entry will specifically be defined by the metes and bounds of the VIP of the Virginia Port Authority, located near Front Royal, Warren County, Virginia, on U.S. Route 340 and 522.

The Secretary of the Treasury is advised by the Commissioner of Customs in matters affecting the establishment, abolishment, or other change in ports of entry. Customs ports of entry are established 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 Treasure by Executive Order 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).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Customs Service. 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. to 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

Executive Order 12291 and Regulatory Flexibility Act

Because this document is related to agency management and 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. Although Customs is soliciting public comments, no notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(a)(2). Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Customs routinely establishes and expands Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although the proposal may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing and expanding port limits at Customs ports of entry 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 Russell Berger, 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 Amendment

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

PART 101—[AMENDED]

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

Authority: 5 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedules of the United States), 1624; Reorganization Plan 1 of 1965; 3 CFR Part 1965 Supp.

§ 101.3 [Amended]

2. It is proposed to amend § 101.3(b) by inserting, "Front Royal, Va., as described in T.D. 89–," in appropriate alphabetical order in the column headed, "Ports of entry" in the Norfolk, Virginia, District of the Southeast Region.

Approved: March 16, 1989.

William von Raab,

Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89–6696 Filed 3–21–89; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 88N–0389]

Medical Devices; Hearing Aid Devices; Technical Data Amendments

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the technical data sections of the agency's regulations on hearing aid devices' professional and patient labeling to incorporate by reference an updated standard. FDA is incorporating the revised standard to introduce technical clarifications.

DATES: Comments by May 22, 1989. FDA is proposing that any final rule based on this proposal would apply to hearing aid devices introduced or delivered for introduction into interstate commerce after 180 days from the date of publication of the final rule.

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

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 15, 1977 (42 FR 9286), FDA published final regulations establishing requirements for professional and patient labeling of hearing aid devices (21 CFR 801.420) and governing conditions for the sale of hearing aid devices (21 CFR 801.421). The regulations became effective on August 15, 1977. Section 801.421(b)(1) of the regulations provides that before the sale of a hearing aid to a prospective user, a hearing aid dispenser is to provide the prospective user with a copy of the User Instructional Brochure. Section 801.420(c)(4) requires that technical data useful in selecting, fitting, and checking the performance of a hearing aid be provided in the brochure or in separate labeling that accompanies the device. The regulation further requires that the technical data values provided in the brochure or other labeling be determined according to the test procedures established by the Acoustical Society of America (ASA) in the "American National Standard Specification of Hearing Aid Characteristics," ANSI S3.22–1976 (ASA 7–1976), which is incorporated by reference into the regulation.

The purpose of ANSI S3.22–1976 (ASA 7–1976) was to establish measurement methods and specifications for several definitive hearing aid characteristics, and to provide a method of ascertaining whether a hearing aid, after being manufactured and shipped, met the specifications and design parameters stated by the manufacturer for a particular model, within the tolerance stated in the standard. The 1976 standard provided valuable guidance to manufacturers, dispensers, and prospective users of hearing aids.

In 1982, ASA revised its standard (ANSI S3–22–1982), (ASA 7–1982). In a proposed rule published in the **Federal Register** of August 14, 1984 (49 FR 32402), FDA proposed to incorporate the revised standard into § 801.420. In a final rule published in the **Federal Register** of July 24, 1985 (50 FR 30153), FDA incorporated the revised standard into § 801.420.

Recently, ASA revised its 1982 standard to introduce important technical clarifications. The revised standard was approved by the American National Standards Institute's (ANSI) standards committee on July 17, 1987, and adopted as ANSI S3.22–1987

(ASA 7–1987), "American National Standard Specification of Hearing Aid Characteristics." The revision broadens the standard to make it also applicable to special purpose hearing aids having high or low frequency emphasis.

FDA is now proposing to update § 801.420(c)(4) by incorporating by reference into the regulation ANSI S3.22–1987 (ASA 7–1987), and thereby requiring, as a minimum, that the User Instructional Brochure or other such hearing aid labeling include the appropriate values or information for the technical data elements specified in § 801.420(c)(4) (i) through (xii) as those elements are defined or used in ANSI S3.22–1987 (ASA 7–1987). The proposed amendment would not affect any other provisions of § 801.420 or § 801.421. Copies of the revised standard are available from the American National Standards Institute, 1430 Broadway, New York, NY 10018, or are available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

FDA advises that it intends to provide a period of 180 days after the date of publication in the **Federal Register** of any final rule based on this proposal during which period the use of either standard will be permitted.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal and has determined that the proposed rule, if promulgated in final form, will not be a major rule as defined by the Order. Although minor changes in testing will be necessary, manufacturers and distributors will not need to purchase new equipment. New testing equipment would make the testing slightly faster, but all required measurements can be made with existing equipment. Even if all of the approximately 20 major and 30 minor manufacturers purchase new equipment, their total cost will be $50,000 ($1,000 each). It is highly unlikely that any of the approximately 1,000 distributors will purchase new equipment. Therefore, the worst-case total cost estimate is slightly over $1 million if all manufacturers and distributors purchase new testing equipment. FDA proposes that the final rule apply to hearing aid devices introduced or delivered for introduction into interstate commerce after 180 days from the date of publication of the final rule. The 180-day phase-in period for the revised User Instructional Brochure should allow a virtually cost-free transition. Therefore, a regulatory impact analysis is not required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities, including small businesses, and has determined that the maximum cost of meeting the revised regulation for a manufacturer or distributor is $1,000. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

Interested persons may, on or before May 22, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of his document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed to amend Part 801 as follows:

PART 801—LABELING

The authority citation for 21 CFR Part 801 is revised to read as follows:

Authority: Secs. 201, 301, 402, 403, 409, 501, 502, 505, 507, 512, 519, 520(e), 601, 602, 701, 704 (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 355, 357, 360b, 360i, 360j(e), 361, 362, 371, 374); sec. 102 (42 U.S.C. 4332); 21 CFR 5.10.

§ 801.420 Hearing aid devices; professional and patient labeling.

* * * * *

(c) * * *

(4) * * * The determination of technical data values for the hearing aid labeling shall be conducted in accordance which the test procedures of the American National Standard Specification of Hearing Aid Characteristics, ANSI S3.22–1987 (Revision of S3.22–1982 (ASA 7–1982), with is incorporated by reference in accordance with 5 U.S.C. 552(a). * * *

* * * * *

Dated: March 3, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–6650 Filed 3–21–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL–75–89]

Taxpayer Assistance Orders

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the issuance of taxpayer assistance orders. The text of the temporary regulations also serves as a comment document for this notice of proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed by May 22, 1989. The regulations are proposed to be effective as of February 8, 1989.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attn: CC: CORP:T:R (GL–75–89), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Joseph W. Clark, 202–566–4574 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR Part 301) under section 7811 of the Internal Revenue Code of 1986. The final regulations which are proposed to be based on the temporary regulations reflect the addition of section 7811 by section 6230 of the Technical and Miscellaneous Revenue Act of 1988. (Pub. L. 100–647). For the text of the temporary regulations see T.D. 8246 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. It is hereby certified that these regulations will not have a significant economic impact on a

substantial number of small entities. A regulatory flexibility analysis is therefore not required under the Regulatory Flexibility Act.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations consideration will be given to any written comments that are submitted (preferably a signed original) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Joseph W. Clark of General Litigation, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Disclosure of information, Employment taxes, Estate tax, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89-6750 Filed 3-21-89; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 19

[Notice No. 680]

Increased Tolerance in Alcohol Content for Distilled Spirits Products in 50 and 100 ml Bottle Sizes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose a liberalizing change in alcohol content tolerance for all spirits products bottled in 50 and 100 ml bottle sizes. Current regulations allow a "normal" drop in alcohol content, occurring during the course of bottling operations, of 0.15 percent alcohol by volume (0.3 proof). However, there is some indication that certain bottlers are having difficulty in limiting the alcohol content loss which occurs during bottling to this amount. When the alcohol content drops more than is permitted by regulations, the spirits must be reconditioned, rebottled or relabeled. All of these operations increase the bottlers' expenses. If this proposed change is adopted, it will allow the alcohol content of all spirits bottled in 50 and 100 ml bottles to drop a maximum of 0.25 percent alcohol by volume (0.5 proof) in the course of bottling operations.

DATE: Written comments must be received by May 22, 1989.

ADDRESS: Send written comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385.

FOR FURTHER INFORMATION CONTACT: Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 ((202) 566-7531).

SUPPLEMENTARY INFORMATION:

Background

The proposed increase in alcohol content tolerance for spirits products in 50 and 100 ml bottles is in response to an industry petition. The industry member has stated that larger than usual evaporative losses often occur when bottling in the 50 and 100 ml size bottles. The larger losses appear to be due primarily to the low rate of product flow through the filler, which increases the time that spirits products are subjected to evaporation. The industry member stated that, with respect to bottling in 50 and 100 ml size bottles, a drop in alcohol content during bottling operations often exceeds the "normal drop" of 0.15 percent alcohol by volume (0.3 proof) provided for in regulations. This proposal would not change the current regulatory requirement that spirits in the bottling tank contain the same percentage of alcohol by volume that will appear on labels for the bottled products.

Implementation of this proposal would not affect the currently permitted 0.25 percent alcohol by volume drop permitted during the bottling of high solids products, i.e., products which contain more than 600 mg of solids per 100 ml of product.

ATF Comment

ATF believes that implementation of this proposal would be effective in helping some bottlers attain regulatory compliance with respect to the alcohol content of products bottled in 50 and 100 ml size bottles. Bottled products which contain more alcohol than is indicated on the labels or which test more than 0.5 percent alcohol by volume below the labeled statement of alcohol content are not affected by this proposal.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) 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.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of entities. Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Drafting Information

The principal authors of this document are Robert Petrangelo and Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 19

Administrative practices and proecedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine. 27 CFR Parts 5 and 19, entitled "Labeling and Advertising of Distilled Spirits," and "Distilled Spirits Plants," respectively, are amended as follows:

PART 5—[AMENDED]

Paragraph 1. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 2. Section 5.37(b) is revised to read as follows:

* * * * *

(b) *Tolerances.* The following tolerances shall be allowed (without affecting the labeled statement of alcohol content) for losses of alcohol content occurring during bottling:

(1) Not to exceed 0.25 percent alcohol by volume for spirits containing solids in excess of 600 mg per 100 ml; or

(2) Not to exceed 0.25 percent alcohol by volume for any spirits product bottled in 50 or 100 ml size bottles; or

(3) Not exceed 0.15 percent alcohol by volume for all other spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5301 (a)); 49 Stat. 917, as amended (27 U.S.C. 205(e)).

PART 19—AMENDED

Paragraph 3. The authority for 27 CFR Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 4. In Section 19.386 paragraphs (a) and (b) are revised to read as follows:

§ 19.386 Alcohol content and fill.

(a) *General.* (1) At representative intervals during bottling operations, proprietors shall test and examine bottled spirits to determine whether those spirits agree in alcohol content and quantity (fill) with that stated on the label or bottle.

(2) If the regional director (compliance) finds that a proprietor's test procedures do not protect the revenue and ensure lable accuracy of the bottled product, the regional director may require corrective measures.

(b) *Variations in alcohol content and fill.* The proprietor shall rebottle, recondition or relabel spirits if the bottle contents do not agree with the respective data on the label or bottle as to:

(1) Quantity (fill), except for such variation as may occur in filling conducted in compliance with good commercial practice with an overall objective of maintaining 100 percent fill for spirits bottle; and/or

(2) Alcohol content, subject to a normal drop in alcohol content which may occur during bottling operations not to exceed: (i) 0.25 percent alcohol by volume for products containing solids in excess of 600 mg per 100 ml, or (ii) 0.25 percent alcohol by volume for all spirits products bottled in 50 or 100 ml size bottles, or (iii) 0.15 percent alcohol by volume for all other spirits and bottle sizes. For example, a product with a solids content of less than 600 mg per 100 ml, labeled as containing 40 percent alcohol by volume and bottled in a 750 ml bottle, would be acceptable if the test for alcohol content found that it contained 39.85 percent alcohol by volume.

* * * * *

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1394, as amended (26 U.S.C. 5201, 5301))

Signed: February 21, 1989.

Stephen E. Higgins,

Director.

Approved: March 2, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89–6689 Filed 3–21–89; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Performance Bonds

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSMRE is reopening the public comment period on the adequacy of proposed Program Amendment Number 32 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to incorporate rule changes initiated by the State. The proposed changes would make discretionary, rather than mandatory, the denial of a permit by the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) if the applicant has ever forfeited a coal or surface mining bond or security; would create a coal mining performance bond fund; would enable the Chief to execute reclamation performance bonds as a surety for coal mine operators under the performance bond fund; and would allow a Phase II bond release for all or part of the area affected under a permit.

This notice sets forth the times and locations that the Ohio program, the proposed amendments to that program, and supporting information in the Administrative Record will be available for public inspection. This notice also sets forth the comment period during which interested persons may submit written comments on the proposed amendments.

DATES: Written comments must be received on or before 4:00 p.m. on April 21, 1989.

ADDRESSES: Written comments should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, supporting information in the Administrative Record, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments and the supporting information by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated November 16, 1987 (Administrative Record No. OH–0994), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 32 to the Ohio program at Ohio Revised Code (ORC) §§ 1513.07, 1513.08, and 1513.16; a new ORC section at 1513.081; and a new corresponding rule at Ohio Administrative Code (OAC) section 1501:13–7–09. The proposed changes: were initiated by Ohio and concerned discretionary, rather than mandatory, denial of a permit by the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) if the applicant has ever forfeited a coal or surface mining bond or security; the creation of a coal mining performance bond fund; enabling the Chief to execute reclamation performance bonds as a surety for coal mine operators under the performance bond fund; and allowance of Phase II bond release for all or part of the area affected under a permit.

On December 18, 1987, OSMRE published a notice in the **Federal Register** (52 FR 48125) announcing receipt of the proposed amendment and inviting public comment on its adequacy. The public comment period ended on January 19, 1988. The public hearing scheduled for January 12, 1988 was not held because no one requested an opportunity to testify.

By letter dated February 18, 1988 (Administrative Record No. OH–1015), OSMRE requested additional information from Ohio concerning the solvency of the proposed performance bond fund, the verification of monthly reported coal tonnages, the review of financial reports from mine operators, and the effect of the performance bond fund on Ohio's Reclamation Supplemental Forfeiture Account. A meeting was held on July 14, 1988 (Administrative Record No. OH–1075) to discuss OSMRE concerns about the proposed amendment with Ohio.

By letter dated August 19, 1988 (Administrative Record No. OH–1090) Ohio submitted additional information responding to OSMRE's concerns and supporting the proposed amendments. In its response, Ohio provided calculations for the balance of the performance bond fund assuming various levels of participation, coal production, and bond forfeiture. Ohio also provided discussion of the procedures to be used to verify mined tonnages, the procedures for review of operator's financial statements, and the effect of the performance bond fund on Ohio's Reclamation Supplemental Forfeiture Account.

Following review of the additional information provided by Ohio on August 19, 1988, OSMRE forwarded a second set of questions about the performance bond fund to the State in a letter dated November 16, 1988 (Administrative Record No. OH–1157). Ohio responded with additional information by letter dated December 28, 1988 (Administrative Record No. OH–1128). In this response, Ohio discussed the following topics:

(1) The State's legal authority to hold bond indefinitely until reclamation is satisfactorily completed;

(2) Use of interest income to the fund to offset administrative expenses;

(3) The ratio of coal to noncoal acreage to be bonded by the fund;

(4) Estimated bond forfeiture rates during the first three years of the fund;

(5) The nature of the financial information submitted by the mine operator to the State in the application for bond and over the life of the permit;

(6) The State's authority to review financial reports from mine operators; and

(7) The staff and procedures to be used by the State in verifying coal tonnages mined from the permit areas.

On February 9, 1989 (Administrative Record No. OH–1149), OSMRE and Ohio conducted a telephone discussion of the State's response of December 28, 1988. Specific discussion topics included the ratio of coal to noncoal acreage to be bonded under the fund, bond forfeitures within the first three years of the fund, State verification of mined tonnages, and the exchange of permit information between the State's bonding and inspection personnel.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments and supporting information proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 13, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-6682 Filed 3-21-89, 8:45 am

BILLING CODE 4301-05-M

---

30 CFR Part 946

Virginia Permanent Regulatory Program—Remining

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; Reopening and extension of the public comment period.

SUMMARY: OSMRE is reopening the public comment period to consider amendments to the Virginia regulatory program (hereinafter referred to as the Virginia program). The State has submitted additional supporting information to its regulations to provide flexibility and encourage remining of previously mined lands. The new material will be addressed together with existing proposed amendments and prior comments.

DATES: Written comments must be received on or before 4:00 p.m. on April 21, 1989. If requested, a public hearing on the proposed amendment will be held on April 17, 1989; requests to present testimony in the hearing must be received on or before 4 p.m. April 6, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 L Street, NW., Washington, DC 20240, Telephone (202) 343-5492.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-2925.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

By letter dated December 22, 1987, Virginia submitted program amendments to the Virginia program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These amendments, if approved, will establish alternate standards for permitting, bonding, and reclamation on surface coal mining and reclamation operations which remine areas affected before the effective date of SMCRA.

OSMRE announced in the February 19, 1988, **Federal Register** (53 FR 5002-5004) receipt of these amendments and invited public comment. The public comment period ended March 21, 1988.

During its review of the proposed amendments, OSMRE identified several concerns that were relayed to the State by letter dated June 13, 1988 (Virginia Administrative Record Number VA 689). By a letter dated July 12, 1988 (Virginia Administrative Record VA 694), Virginia resubmitted the first of three parts of the proposed amendments with corrections and clarifications and expressed its intent to submit additional information and changes at a later date. At that time, OSMRE announced in the August 12, 1988, **Federal Register** (53 FR 30450-30452) receipt of this information and the public comment period. The second public comment period ended September 12, 1988.

By letter dated December 13, 1988 (Virginia Administrative Record VA 714), Virginia resubmitted part two of the proposed amendments with additional corrections and clarifications (hereinafter referred to as phase II submittal) relating to OSMRE's concern letter dated June 13, 1988 (Virginia Administrative Record VA 689).

After receipt of Virginia's phase II submittal, OSMRE published a notice suspending decisionmaking action and publication of final rules relating to Virginia's proposed remining regulations pending receipt of the third and fourth priority phase (hereinafter referred to as phase III) submittals relating to OSMRE's concern letter dated June 13, 1988 (Virginia Administrative Record VA 689). The suspension notice was published in the January 30, 1989, **Federal Register** (54 FR 4297 through 4298).

By letter dated February 17, 1989 (Virginia Administrative Record VA 718), Virginia submitted the phase III corrections. Accordingly, OSMRE is reopening and extending the public comment period of Virginia's December 22, 1987, proposed program amendments as revised December 13, 1988, and February 17, 1989. This action is being taken to provide the public with an opportunity to reconsider the adequacy of the proposed amendments together with the additional information.

II. Discussion of Amendments

A discussion of the originally proposed amendments is contained in the February 19, 1988, **Federal Register** (53 FR 5002 through 5004). In a meeting on May 12, 1988, Virginia notified OSMRE that any concerns identified in the review process would be addressed by priority and the priorities established would be:

1. Definitions, permitting requirements for remining (except waste pile reprocessing and remnant remining), special remining performance standards, and policy on implementing no cost Abandoned Mined Land (AML) contracts;

2. Reprocessing of coal waste piles for permitting and performance standards;

3. Bonding alternatives and civil penalty credits; and

4. Remnant remining permitting and performance standards.

Following receipt of OSMRE's June 13, 1988, letter (Virginia Administrative Record VA 689) detailing concerns identified during the review of the proposal, Virginia resubmitted corrections and clarifications relating to the first priority items (hereinafter referred to as phase I). The phase I resubmittal (Virginia Administrative Record VA 694) was discussed in the

August 12, 1988, Federal Register (53 FR 30450 through 30451).

Virginia, by letter dated December 13, 1988, resubmitted parts of the proposed amendment containing corrections and clarifications for items identified as second and third priority (hereinafter phase II). The resubmission is briefly described below.

1. The proposed definition for "Reprocessing Coal Mine Waste" has been modified in response to OSMRE's concern that the originally proposed definition appeared to allow redisturbance and reclamation of coal mine waste piles created after the effective date of SMCRA under proposed standards less stringent than those in effect at the time such piles were created.

2. Proposed section 480–03–19.830.12, Reprocessing Coal Mine Waste Permit Requirements, has been deleted and new proposed sections 480–03–19.830.17 and 480–03–19.830.19 have been added. The new sections address OSMRE's concerns, that sections 480–03–19.830.12 as originally proposed did not meet the minimum requirements of 30 CFR Parts 779 and 780.

(a) Proposed section 480–03–19.830.17, Reprocessing Coal Mine Waste Permit Requirements, revises and clarifies that a reclamation/operational plan must be filed with the Division and must meet the requirements of section 480–03–19.773.1 through 480–03–19.778.22 which are not inconsistent with this part. Also, it addresses that the minimum environmental resources information requirements must meet the requirements of 480–03–19.779.24 and 480–03–19.779.25(d) through (l).

(b) Proposed section 480–03–19.830.19, Reprocessing Coal Mine Waste Permit Requirements—Minimum Requirements for Reclamation and Operations Plan, revises and clarifies that a reclamation/operational plan must be filed and contains the minimum information required.

3. Proposed section 480–03–19.832.2 sets forth civil penalty options available for reclamation only operations conducted on previously mined lands.

4. Proposed section 480–03–19.832.10 has been revised to identify what sites would qualify for civil penalty credits, who the civil penalty credit is applicable to, the procedure for earning credits and how the credits are applied.

By letter dated February 17, 1989, (Administrative Record VA 718), Virginia resubmitted parts of the proposed amendment containing corrections and clarifications for items identified as third and fourth priority (hereinafter phase III). The resubmission is briefly described below.

1. Proposed section 480–03–19.830.13, Remining Bond Requirements, has been revised to state that, "Surface coal mining activities on previously mined lands shall meet the requirements of Parts 480–03–19.800 or 801, except as provided in section 480–03–19.830.15."

2. Proposed section 480–03–19.830.15, Remining Reclamation Bond Credits, has been revised and includes information on how bond credits are earned, inspection and enforcement procedures, bond release procedures, and applications of the credits.

3. Proposed section 480–03–19.835.5, Definitions, has been revised to include a description of some of the areas that fall under the definition of remnant remining.

4. Proposed section 480–03–19.835.12, Remnant Remining Permit Requirements, has been revised and new subsections 480–03–19.835.12(a)(11) and 480–03–19.835(a)(12) have been added addressing surface water monitoring plans and pollutional discharges. Section 480–03–19.835.12(b) has been revised and subsections (b)(1); (b)(2); (b)(3); and (b)(4) have been eliminated. Sections 480–03–19.835.12(c) and 480–03–19.835.12(d), as originally proposed, have been deleted and sections 480–03–19.835.12(e); 480–03–19.835.12(F) and 480–03–19.835.12(g) have been renumbered as 480–03–19.835.12(c); 480–03–19.835.12(d) and 480–03–19.835.12(e), respectively.

5. Proposed section 480–03–19.836, Remnant Remining Performance Standards, has been revised at section: 480–03–19.836(e)(1) to reference both sections 480–03–19.831.17 and 833.11. Section 480–03–19.836(e)(4) has been revised to clarify sediment control removal procedures. Section 480–03–19.836(e)(5) has been revised and references both 480–03–19.825.11 and 480–03–19.825.12. Sections 480–03–19.836(e)(6) and (7) have been added and address monitoring of surface discharges from the area. Section 480–03–19.836(g)(3) has been revised to clarify that bond release or bond reduction shall comply with sections 480–03–19.831.20, 480–03–19.800.40, 480–03–19.801.17, 480–03–19.801.18, and 480–03–19.830.15.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record. All public comments to previous notices that have not been addressed will be considered in OSMRE's final decision.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by close of business on April 6, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearings a public meeting, rather than a public hearing, may be held.

Persons wish to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meeting will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **"ADDRESSES."** A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 13, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-6681 Filed 3-21-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL—3540-3]

Approval and Promulgation of Implementation Plans; Ohio

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

ACTION: Extension of the public comment period.

SUMMARY: On December 28, 1988 (53 FR 52442), the U.S. Environmental Protection Agency (USEPA) proposed to disapprove permits for eight total suspended particulate (TSP) fugitive emission sources in the Middletown area of Ohio.

At the time of the proposed rulemaking, a 30-day comment period was provided. The Ohio Environmental Protection Agency requested a 30-day extension of the public comment period. Based upon this request, USEPA is extending the public comment period for an additional 30 days to February 28, 1989.

DATE: Comments must be postmarked on or before February 28, 1989.

ADDRESSES: 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: Maggie Green, Air and Radiation Branch, (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6088.

Authority: 42 U.S.C. 7401—7642.

Dated: March 2, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-6710 Filed 3-21-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-8

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by General Services Administration

AGENCY: General Services Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation requires that the General Services Administration operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individuals with handicaps and qualified individual with handicaps, and establishes a detailed complaint mechanism for resolving allegations of discrimination against the General Services Administration. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies.

DATES: To be assured of consideration, comments must be in writing and must be received on or before July 20, 1989. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: The Civil Rights Division, General Services Administration, Wshington, DC 20405. Comments received will be available for public inspection in Room 5128, 18th and F Streets, NW, from 8:00 a.m. to 4:30 p.m. Monday through Friday except legal holidays. Copies of this notice will be made available on tape for persons with impaired vision who request them.

FOR FURTHER INFORMATION CONTACT: Myrtle K. Cook, Civil Rights Division, General Services Administration, (202) 566-1368 or (202) 566-0702 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the General Services Administration (GSA).

On August 28, 1984, GSA participated in a joint publication of a Notice of Proposed Rulemaking (NPRM) issued by twenty-one agencies proposing identical standards and procedures for implementing section 504. (49 FR 34132.) Following the public comment period, however, the agency determined that the rule as proposed would be inadequate for GSA's purposes in light of the agency's unique responsibilities for the buildings in which the Federal Government is housed. The proposed rule published today addresses with specificity the manner in which GSA will carry out its statutory responsibilities as the Government's "landlord," in order to enhance the abilities of other Federal agencies to offer their programs in a manner accessible to individuals with handicaps. It also outlines proposed procedures for cooperation betwen GSA and Federal tenant agencies when the accessibility of a Federal agency's programs is affected by the inaccessibility of a building under GSA's control.

As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 US.C. 794 (1978 amendment italicized)).

Apart from language tailored to GSA's role as the Federal landlord, the substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. (*See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs)). This general parallelism is in accord with the intent

expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this proposed rule and the Federal Government's section 504 regulations for federally assisted programs. Many of these changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico v. Goldschmidt*, 687 F. 2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F. 2d 1272 (D.C. Cir. 1981) (*APATA*); *see also Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F. 2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospitals care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing § 504 (for federally assisted programs) are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agency believes that there are no significant differences between this proposed rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis

Section 105–8.101 Purpose

Section 105–8.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 105–8.102 Application

The regulation applies to all programs or activities conducted by GSA. Under this section, a federally conducted program or activity is, in simple terms, anything GSA does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by GSA for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the GSA facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 105–8.103 Definitions

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 105–8.160(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (*see* § 105–8.170–7) begins when the agency receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (23 CFR 41.3(f)) except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by GSA regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by GSA. The term "facility" is used in §§ 105–8.149, 105–8.150, and 105–8.170–5.

"Historic preservation programs," "Historic properties," and "Substantial impairment." These terms are defined in order to aid in the interpretation of §§ 105–8.150–1(b) and 105–8.150–2(b), which relate to accessibility of historic preservation programs.

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted program (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus,

although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

The first paragraph of the definition deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purposes of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Davis.* In that case, the Court ruled that a hearing impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore, concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alternation in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicap who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally altar that nature of the program.

The agency has the burden of demonstrating that proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in § 105–8.154 and § 105–8.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, the second paragraph adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

The third papragraph explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment on the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this subpart by § 105–8.140. Nothing in this subpart changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 105–8.110 Self-Evaluation

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 105–8.111 Notice

Section 105–8.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 105–8.130 General Prohibitions Against Discrimination

Section 105–8.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Section 105–8.130(a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 105–8.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 105–8.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Section 105–8.130(b) prohibits overt denials of equal treatment of individuals with handiaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutly exclude certain classes of

disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Section 105–8.130(b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 105–8.149 to 105–8.151) and communications (§ 105–8.160) are specific applications of this principle.

Despite the mandate of § 105–8.130(d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, § 105–8.130(b)(1)(iv), in conjunction with § 105–8.130(d) permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Section 105–8.130(b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, § 105–8.130(b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Section 105–8.130(b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Section 105–8.130(b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Section 105–8.130(b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Section 105–8.130(b)(4) specifically applies the prohibition enunciated in § 105–8.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Section 105–8.130(b)(4) does not apply to construction of additional buildings at an existing site.

Section 105–8.130(b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Section 105–8.130(b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 105–8.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Section 105–8.130(b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Section 105–8.130(c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Section 105–8.130(d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 105–8.140 Employment

Section 105–8.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness v. United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd v. United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 105–8.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards

on nondiscrimination in employment on the basis of handicap. In addition to this section, § 105–8.170(2) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 105–8.148 Consultation With the Architectural and Transportation Barriers Compliance Board

Section 105–8.148 provides that GSA must consult with the Architectural and Transportation Barriers Compliance Board in carrying out GSA's responsibilities under this subpart as they relate to architectural barriers in GSA-controlled facilities that house Federal agencies.

Section 105–8.149 Program Accessibility: Discrimination Prohibited

Section 105–8.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 105–8.150 and 105–8.151.

Section 105–8.150 Program Accessibility: Existing Facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Section 105–8.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 105–8.105–1(a)).

Paragraph (b), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with § 105–8.150–2(b).

Section 105–8.150–2(a) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alterations to a load-bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Section 105–8.150–1(b) provides an additional limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, § 105–8.150–1(b) provides that in historic preservation programs the agency is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, § 105–8.150–2(b) requires the agency to give priority to methods of providing program accessibility that permit individuals with handicaps to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the agency administer programs in the most integrated setting appropriate to the needs of qualified individuals with handicaps (§ 105–8.130(d)). Only when providing physical access would result in a substantial impairment of significant historic features, in a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the agency adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § 105–8.150–2(b).

The special limitation on program accessibility set forth in § 105–8.150–1(b) is applicable only to programs that have preservation of historic properties as a primary purpose (*see supra* discussion of definition of "historic preservation program," § 105–8.103). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the agency is not bound to a particular facility. In can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Sections 105–8.150–3 and 105–8.150–4 establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 38 CFR 41.57(b), GSA must make any necessary structural changes in facilities it occupies as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within one year of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 105–8.151 Program Accessibility: New Construction and Alterations

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 105–8.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. However, GSA programs carried out in those buildings are subject to the program accessibility standard for existing facilities in § 105–8.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 105–8.151. Programs carried out in those buildings by agencies other than GSA are subject to the program accessibility standards in those agencies' regulations.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new

construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings. However, in leasing space, GSA will first attempt to find space that meets all the requirements of the Uniform Federal Accessibility Standards (UFAS). If no such bid is received, other bids may be accepted. GSA's preference is for buildings complying with UFAS.

In *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 105–8.152 Program Accessibility: Assignment of Space

This section and the next are written especially to address the following major areas: (1) GSA's authorities and responsibilities for assignment of space (§ 105–8.152); and (2) occupant agencies' transition plans are required by each agency's section 504 regulation (§ 105–8.153). These two sections are intended to deal with the interplay between GSA's responsibilities as the Federal Government's "landlord" and other agencies' section 504 obligations to make programs accessible, as well as with the interaction between GSA and Federal tenant agencies when the accessibility of a Federal agency's programs is affected by the unaccessibility of a building under GSA's control. GSA has unique responsibilities for space owned and leased by the Federal Government, pursuant to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq. and various sections of Title 40 and 44 (1982) and the Public Buildings Act of 1959, as amended (40 U.S.C. 601–616 (1982)). For example, GSA has the authority and responsibility to perform centralized property management functions for agencies of the Federal Government. 40 U.S.C. 490. GSA is authorized to alter or otherwise arrange for alterations for occupant agencies on either a no-cost or reimbursable basis. *Id.* at sections 490(j) and 603. GSA also has exclusive statutory authority and responsibility to construct most types of new public buildings. *Id.* at section 601. GSA has interpreted and further defined these duties in its Federal Property Management Regulations, 41 CFR Chapter 101, Subchapter D (1986).

Section 105–8.152 is intended to ensure that assignment or reassignment of space will not result in one or more of an occupant agency's programs or activities being inaccessible to individuals with handicaps. GSA is responsible to ensure that federally owned space or space leased from nonfederal sources does not make an occupant agency's programs inaccessible. While GSA is ultimately responsible for the accessibility of the space under its control, the nature of program accessibility requires the participation of the occupant agency in decisions affecting its space. Unless the occupant agency analyzes its own programs and determines which facilities must be altered to make its programs accessible to individuals with handicaps, GSA cannot proceed in a cost-effective manner.

Prior to the assignment or reassignment of space to a Federal agency, GSA must consult with the agency to ensure that the assignment or reassignment will not result in one or more of the agency's programs or activities being inaccessible to individuals with handicaps. If the agency informs GSA that use of the space will result in one or more of the agency's programs being inaccessible, GSA must take one or more of the following actions to make the programs accessible: (1) Arrange for alterations to facilities; (2) locate and provide alternative space that will not result in one or more of the agency's programs being inaccessible; or (3) take any other actions that result in making the agency's programs accessible. Under this proposal GSA may not require the agency to accept space that results in one or more of the agency's programs being inaccessible.

Section 105–8.154, which contains exceptions to the program accessibility requirements, is applicable to this section.

Section 105–8.153 Program Accessibility: Interagency cooperation

Over the next several years, Federal agencies are required to evaluate their own programs and develop transition plans when structural changes are necessary to achieve the goal of program accessibility. The agencies generally cannot, however, perform or contract for these changes unless authorized by GSA. In other words, those agencies that are required by their section 504 transition plan to alter GSA-controlled buildings must request that GSA approve these alternations.

Section 105–8.153 establishes a framework for GSA to effectively receive and process agencies' requests for structural changes or other actions under GSA's control. Upon receipt of an agency's transition plan, GSA must assist or advise the requesting agency in providing or arranging for the requested action within the time frames specified in the transition plan.

GSA's role in this area will, however, be more than merely reactive. GSA intends to participate with these Federal agencies in the development of their transition plans. In this capacity GSA can and should call upon its resources to ensure that an agency's decision to request an alteration is well-informed. Even before agency transition plans are completed, GSA expects to conduct a survey of buildings under its control in order to facilitate compliance with § 105–8.153. Further, GSA intends to take the lead in coordinating accessibility issues related to those buildings under GSA control with several Federal agencies as tenants. For example, if two Federal agencies occupying different floors of the same building each request that public meeting space on their floors be made accessible, GSA should take the lead in determining with the two agencies if their accessibility needs would be met by altering and sharing one room.

Section 105–8.153 provides that GSA, upon request from an occupant agency engaged in the development of a transition plan under section 504, must participate with the occupant agency in the development of the transition plan and provide information and guidance to the occupant agency. Upon request, GSA must conduct space inspections to assist the agency in determining whether a current assignment results in one or more of the occupant agency's programs or activities being inaccessible. (§ 105–8.152(a)).

Section 105–8.153–2 establishes procedures for GSA to deal with an occupant agency's request for new space, additional space, relocation to accessible space, alterations, or other actions under GSA's control that are needed to ensure program accessibility in the requesting agency's programs as required by the agency's section 504 transition plan.

Like § 105–8.152, § 105–8.153 covers only those buildings that are under GSA's control. It does not address the situation where GSA has delegated management responsibilities to the sole occupant of a Federal building. Nor does

it specify the mechanism by which cost reimbursement between GSA and other Federal agencies will be made. Determinations as to the amount of funds needed for alterations, which agency will obtain the funds, and the time frame within which the funds will be obtained will be made on a case-by-case basis.

Section 105–8.154 Program Accessibility: Exception

Section 105–8.154 places explicit limits in the agency's obligation to comply with the provisions concerning accessibility to GSA's program, assignment of space to other agencies, and cooperation with other agencies. It generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This section provides that in meeting the program accessibility requirements of §§ 105–8.150, 105–8.152, and 105–8.153, GSA is not required to take any action that would result in a fundamental alteration in the nature of GSA's program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 105–8.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico v. Goldschmidt*, 687 F. 2d 644 (2d Cir. 1989); *American Public Transit Association v. Lewis, (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981).

Section 105–8.154 and § 105–8.160(d) are also supported by the Supreme Court's Decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenger to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on individuals with handicaps. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on individuals with handicaps but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require "'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program.'" *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations certain accommodations for an individual with handicaps may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This section however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with §§ 105–8.150, 105–8.152, and .153 would in most cases not result in undue financial and administrative burdens on GSA. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with any of these three sections would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with GSA. The decision that compliance would result in such alteration or burdens must be made by the administrator or his designee and must be accompanied by a written statement of the reasons for reaching that conclusion. *See* § 105–8.154. Any person who believes that he or she or any specific class of persons has been injured by the Responsible Official's decision or failure to make a decision may file a complaint under the compliance procedures established in § 105–8.170.

Section 105–8.160 Communications

Section 105–8.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 105–8.160(a) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 105–8.160(a)(1)(i)). The agency shall honor the choce unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 105–8.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 105–8.154). Unless not required by § 105–8.160(d) the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 105–8.154 *Program accessibility: Exceptions*, regarding the determination of undue financial and administrative burdens, also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § 105–8.160.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a person with hearing impairments. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the applicant or participant with hearing impairments is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For persons with vision impairments, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to

participate in or benefit from its programs or activities, (2) the opportuntiy to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with persons with vision and hearing impairments involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 105–8.160(a)(1)(i)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Section § 105–8.160(b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Section § 105–8.160(c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 105–8.170 Compliance Procedures

Section 105–8.170 establishes a detailed complaint processing and review procedure for resolving allegations of discrimination in violation of section 504 in GSA's programs or activities. It is based on the Department of Justice's rule for its programs (28 CFR 39.170) and provides an opportunity for a hearing before an administrative law judge. We seek comments on the merits of following these procedures rather than the less detailed provisions of other agencies' rules for federally conducted programs.

Section 105–8.170–1 specifies that §§ 105–8.170–3 through 105–8.170–13 establish the procedures for processing complaints other than employment complaints. Section 105–8.170–2 provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Section 105–8.170–3 vests in the Responsible Official the responsibility for the overall management of the section 504 compliance program. "Responsible Official" or "Official," as defined in § 105–8.103, refers to the Director of Civil Rights Division, who is designated as the official responsible for coordinating implementation of compliance procedures set forth in § 105–8.170. The definition of "Official" includes other GSA Officials to whom authority has been delegated by the Official.

Section 105–8.170–4 (a) and (c) provide that any person who believes that he or she has been discriminated against may file a complaint within 180 days from the date of the alleged discrimination. The Official may extend the time limit when the complainant shows good cause. Good cause could be found if, for example, (1) the complainant mistakenly filed with the wrong agency and was not informed of the mistake with the 180 days; or (2) the complainant could not reasonably be expected to know of the act or event said to be discriminatory.

Section 105–8.170–4(b) requires that the name and identity of a complainant be held in confidence unless he or she waives that right in writing and except to the extent necessary for compliance purposes.

Complaints may be mailed or delivered to the Administrator, the Responsible Official, or other agency Officials. Complaints received by any agency official other than the Responsible Official must be forwarded immediately to the Responsible Official (§ 105–8.170–4(d).

Section 105–8.170–5 requires the agency to send to the Architectural and Transportation Barriers Compliance Board quarterly reports of complaints alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

The Responsible Official is required to accept all complete complaints over which the agency has jurisdiction (§ 105–8.170–6(a)). If the Official determines that the agency does not have jurisdiction over a complaint, the Official shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 105–8.170–6(d)).

If a complaint is not complete when it is filed, the Official must notify the complainant within 30 days that additional information is needed. The complainant must furnish the necessary information within 30 days of receipt of the notice, or the complaint will be dismissed without prejudice. Filing an incomplete complaint within 180 days from the date of the alleged discrimination satisfies the requirement of § 105–8.170–4(c), but the time frames governing the Official's other obligations to process the complaint (*see e.g.*, §§ 105–8.170–7 and 105–8.170–8) do not begin to operate until the Official receives a complete complaint.

Within 180 days of receipt of the complete complaint, the Official is to investigate the complaint, attempt an informal resolution, and, if informal resolution is not achieved, issue a letter of findings (§ 105–8.170–7). Within the time limit, the Official should make every effort to achieve informal resolution whenever possible.

Section 105–8.170–8 requires that the Official's letter be sent to the complainant and respondent, and that it contain findings of fact and conclusions of law, the relief granted if discrimination is found, and notice of the right to appeal. If neither party files an appeal from the letter of findings within 30 days after receipt of the letter, the letter will constitute the final decision of the agency (§ 105–8.170–9).

The regulation provides that a party may appeal the Official's letter of findings to the Special Counsel for Ethics and Civil Rights. Section 105–8.170–11 provides an opportunity for a hearing before an administrative law judge (ALJ). The ALJ would make a recommended decision to the Special Counsel for Ethics and Civil Rights, who would make the final agency decision. The purpose of the hearing is to provide a forum in which the complainant or respondent can have an opportunity to be heard, confront witnesses, and present evidence so that an ALJ can issue a recommended decision that is well-reasoned and justified on the basis of the evidence presented.

It would be expected that an opportunity for a hearing before an ALJ would assure more impartiality and the appearance of more impartiality than a decision made by one agency official concerning other officials of the same agency. It would also be expected that agency decisions based on a hearing record would more likely survive later judicial review.

On the other hand, a more streamlined procedure without the opportunity for a hearing would ensure more rapid agency decisions on complaints. As a result, complainants could obtain agency relief more quickly in those instances where they prevailed.

We seek comment on the merits of allowing the opportunity for a hearing.

Under the proposal another person or organization would be allowed to participate as a third party or amicus curias if the ALJ determines that the petitioner has a legitimate interest in the proceedings, that participation will not unduly delay the outcome, and the petitioner's participation may contribute materially to the disposition of the proceedings.

Under § 105–8.170–12, the Special Counsel for Ethics and Civil Rights renders a final agency decision after appeal without a hearing or after a hearing. The Special Counsel directs appropriate remedial action if discrimination is found. The Special Counsel's decision will involve reviewing the entire file, including the investigative report, preliminary finding, and, if a hearing was held, the hearing record and recommended decision of the ALJ. If it is the decision of the Special Counsel to reject or modify the recommended decision of the judge, the reasons for the rejection or a modification will be put in writing and made part of the decision (§ 105–8.170–12(a)). The decision shall be made within 60 days of receipt of the complaint file or the hearing record.

Section 105–8.171 Complaints Against an Occupancy Agency

Section 105–8.171 deals with complaints against an occupant agency alleging that the agency's program is inaccessible because existing facilities under GSA's control contain architectural barriers. In these cases, the occupant agency will likely require assistance from GSA in devising and implementing remedies for any violations of section 504 that may be found to exist. The section provides that in such cases GSA and the occupant agency that originally received the complaint are jointly responsible for complaint resolution. In our view, early GSA involvement in the complaint process will result in a more speedy, efficient complaint resolution system. The section makes GSA jointly responsible for complaints only when an occupant agency sends a copy of a complete complaint to GSA. GSA must make reasonable efforts to follow the time frames for complaint resolution that go into effect under the notifying occupant agency's rules when it receives a complete complaint.

List of Subjects in 41 CFR Part 105–8

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Federal property management, Government employees, Handicapped, Historic places, Historic preservation.

For reasons stated in the preamble, Chapter 105 of Title 41 of the Code of Federal Regulations is proposed to be amended as follows:

Part 105–8 is added to read as follows:

PART 105–8—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY GENERAL SERVICES ADMINISTRATION

Sec.

Authority: 29 U.S.C. 794.

§ 105–8.101 Purpose.

The purpose of this subpart is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 105–8.102 Application.

This subpart applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 105–8.103 Definitions.

For purposes of this subpart, the term—

"Agency" means the General Services Administration (GSA), except when the context indicates otherwise.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of, programs or activities conducted by GSA. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances or other real or personal property.

"Historic preservation programs" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(a) "Physical or mental impairment" includes—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(b) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by the agency as having such an impairment.

"Official or Responsible Official" means the Director of the Civil Rights Division of the General Services Administration or his or her designee.

"Qualified individual with handicaps" means—

(a) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(b) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(c) "Qualified handicapped person" as the term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this subpart by § 105–8.140.

"Respondent" means the organizational unit in which a complainant alleges that discrimination occurred.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810); and the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28). As used in this subpart, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 105–8.104—105–8.109 [Reserved]

§ 105–8.110 Self-evaluation.

(a) The agency shall, by [*Insert date one year after the effective date of this part*], evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this subpart, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of interest persons consulted;

(2) A description the areas examined and any problems identified; and

(3) A description of any modifications made or to be made.

§ 105–8.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this subpart and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 105–8.112—105–8.129 [Reserved]

§ 105–8.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licencing, or other arrangements, on the basis of handicaps—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this subpart.

(c) The exclusion of persons without handicaps from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this subpart.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 105–8.131—105–8.139 [Reserved]

§ 105–8.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 105–8.141—105–8.147 [Reserved]

§ 105–8.148 Consultation with the Architectural and Transportation Barriers Compliance Board.

GSA shall consult with the Architectural and Transportation Barriers Compliance Board (ATBCB) in carrying out its responsibilities under this subpart concerning architectural barriers in facilities that are subject to GSA control. GSA shall also consult with the ATBCB in providing technical assistance to other Federal agencies with respect to overcoming architectural barriers in facilities. The agency's Public Buildings Service shall implement this section.

§ 105–8.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 105–8.150 and 105–8.154, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 105–8.150 Program accessibility: Existing facilities.

§ 105–8.150–1 General.

The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This subsection does not—

(a) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(b) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property.

§ 105–8.150–2 Methods.

(a) *General.* The agency may comply with the requirements of § § 105–8.150 through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(b) *Historic preservation programs.* In meeting the requirements of § § 105–8.105–1 in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of §§ 105–8.105–1(b) or 105–8.154 alternative methods of achieving program accessibility include—

(1) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(2) Assigning persons to guide individuals with handicaps into or

through portions of historic properties that cannot otherwise be made accessible; or

(3) Adopting other innovative methods.

§ 105–8.150–3 Time period for compliance.

The agency shall comply with the obligations established under § 105–8.150 by [Insert date sixty days after the effective date of this part] except that where structural changes in facilities are undertaken, such changes shall be made by [Insert date three years after the effective date of this part], but in any event as expeditiously as possible.

§ 105–8.150–4 Transition plan.

In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by (*Insert date one year after the effective date of this part*), a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(a) Identify physical obstacles in the facilities occupied by GSA that limit the accessibility of its programs or activities to individuals with handicaps;

(b) Describe in detail the methods that will be used to make the facilities accessible;

(c) Specify the schedule for taking the steps necessary to achieve compliance with § 105–8.150 and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(d) Indicate the official responsible for implementation of the plan.

§ 105–8.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§ 105–8.152 Program accessibility: Assignment of space.

(a) When GSA assigns or reassigns space to an agency, it shall consult with the agency to ensure that the assignment or reassignment will not result in one or more of the agency's programs or activities being inaccessible to individuals with handicaps.

(b) Prior to the assignment or reassignment of space to an agency, GSA shall inform the agency of the accessibility, and/or the absence of accessibility features, of the space in which GSA intends to locate the agency. If the agency informs GSA that the use of the space will result in one or more of the agency's programs being inaccessible, GSA shall take one or more of the following actions to make the programs accessible:

(1) Arrange for alterations, improvements, and repairs to buildings and facilities;

(2) Locate and provide alternative space that will not result in one or more of the agency's programs being inaccessible; or

(3) Take any other actions that result in making this agency's programs accessible.

The responsibility for payment to make the physical changes in the space shall be assigned on a case-by-case basis as agreed to by GSA and the user agency, dependent on individual circumstances.

(c) GSA may not require the agency to accept space that results in one or more of the agency's programs being inaccessible.

§ 105–8.153 Program accessibility: Interagency cooperation.

§ 105–8.153–1 General.

GSA, upon request from an occupant agency engaged in the development of a transition plan under section 504, shall participate with the occupant agency in the development and implementation of the transition plan and shall provide information and guidance to the occupant agency. Upon request, GSA shall conduct space inspections to assist the agency in determining whether a current assignment of space results in one or more of the occupant agency's programs or activities being inaccessible. GSA shall provide the occupant agency with a written summary of significant findings and recommendations, together with data concerning programmed repairs and alterations planned by GSA and alterations that can be effected by the agency.

§ 105–8.153–2 Requests from occupant agencies.

(a) Upon receipt of an occupant agency's request for new space, additional space, relocation to accessible space, alterations, or other actions under GSA's control that are needed to ensure program accessibility in the requesting agency's program(s) as required by the agency's section 504 transition plan, GSA shall assist or advise the requesting agency in providing or arranging for the requested action within the timeframes specified in the requesting agency's transition plan.

(b) If the requested action cannot be completed within the time frame specified in an agency's transition plan, GSA shall so advise the requesting agency within 30 days of the request by submitting, after consultation with the agency, a revised schedule specifying the date by which the action shall be completed. If the delay in completing the action results in or continues the inaccessibility of the requesting agency's program, GSA and the agency shall, after consultation, take interim measures to make the agency's program accessible.

(c) If GSA determines that it is unable to take the requested action, GSA shall—

(1) Within 30 days, set forth in writing to the requesting agency the reasons for denying the agency's request, and

(2) Within 90 days, propose to the requesting agency other methods for making the agency's program accessible.

(d) Receipt of a copy of an occupant agency's transition plan under section 504 shall constitute notice to GSA of the requested actions in the transition plan and of the time frames within which the actions are required to be completed.

§ 105–8.154 Program accessibility: Exceptions.

Section 105–8.150, 105–8.152, and 105–8.153 do not require GSA to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where GSA personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all resources available

for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

§§ 105-8.155—105-8.159 [Reserved]

§ 105-8.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 150–8.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with § 105–8.160 would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 105-8.161—105-8.169 [Reserved]

§ 105-8.170 Compliance procedures.

§ 105-8.170-1 Applicability.

Except as provided in § 105–8.170–2, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

§ 105-8.170-2 Employment complaints.

The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures establishing by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

§ 105-8.170-3 Responsible Official.

The Responsible Official shall coordinate implementation of this section.

§ 105-8.170-4 Filing a complaint.

(a) *Who may file a complaint.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart may by him or herself or by his or her authorized representative file a complaint with the Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this subpart and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Official.

(b) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this subpart, including the conduct of any investigation, hearing, or proceeding under this subpart.

(c) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The Official may extend this time limit for good cause shown. For purposes of determining when a complaint is timely filed under this subsection, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency.

(d) *How to file.* Complaints may be delivered or mailed to the Administrator, the Responsible Official, or other agency officials. Complaints should be sent to the Director of Civil Rights, Civil Rights Division, General Services Administration, 18th and F Streets, NW, Washington, D.C. 20405. If any agency official other than the Official receive a complaint, he or she shall forward the complaint to the Official immediately.

§ 105-8.170-5 Notification to the Architectural and Transportation Barriers Compliance Board.

The agency shall prepare and forward comprehensive quarterly reports to the Architectural and Transportation Barriers Compliance Board containing information regarding complaints received alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps. The agency shall not include in the report the identity of any complainant.

§ 105-8.170-6 Acceptance of complaint.

(a) The Official shall accept a complete complaint that is filed in accordance with § 105–8.170–4 and over which the agency has jurisdiction. The Official shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(b) If the Official receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complainant, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

(c) The Official may reject a complaint, or a portion thereof, for any of the following reasons:

(1) It was not filed timely and the extension of the 180-days period as provided in § 105–8.170–4(c) is denied;

(2) It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same complainant(s) which is pending in the agency or which has been resolved or decided by the agency; or

(3) It is not within the purview of this subpart.

(d) If the Official receives a complaint over which the agency does not have jurisdiction, the Official shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

§ 105–8.170–7 Investigation/Conciliation.

(a) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and if no informal resolution is achieved, issue a letter of findings. The 180-day time limit may be extended with the permission of the Assistant Attorney General. The investigation should include, where appropriate, a review of the practices and policies that led to the filing of the complaint, and other circumstances under which the possible noncompliance with this part occurred.

(b) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(c) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and the respondent with an opportunity for informal resolution of the complaint.

(d) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and signed by the complainant and respondent. The agreement shall be made part of the complaint file, with a copy of the agreement provided to the complainant and the respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and the respondent have agreed.

(e) The written agreement shall remain in effect until all corrective actions to which the complainant and the respondent have agreed upon have been completed. The complainant may reopen the complaint in the event that the agreement is not carried out.

§ 105–8.170–8 Letter of findings.

If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested. The letter shall contain, at a minimum, the following:

(a) Findings of fact and conclusions of law;

(b) A description of a remedy for each violation found;

(c) A notice of the right of the complainant and the respondent to appeal to the Special Counsel for Ethics and Civil Rights; and

(d) A notice of the right of the complainant and the respondent to request a hearing.

§ 105–8.170–9 Filing an appeal.

(a) Notice of appeal to the Special Counsel for Ethics and Civil Rights, with or without a request for hearing, shall be filed by the complainant or the respondent with the Responsible Official within 30 days of receipt of the letter of findings required by § 105–8.170–7.

(b) If a timely appeal without a request for hearing is filed by a party, any other party may file a written request for a hearing within the time limit specified in § 105–8.170–9(a) or within 10 days of the date on which the first timely appeal without a request for hearing was filed, which ever is later.

(c) If no party requests a hearing, the Responsible Official shall promptly transmit the notice of appeal and investigate record to the Special Counsel for Ethics and Civil Rights.

(d) If neither party files an appeal within the time prescribed in § 105–8.170–9(a) the Responsible Official shall certify, at the expiration of that time, that the letter of findings is the final agency decision on the complaint.

§ 105–8.170–10 Acceptance of appeals.

The Special Counsel shall accept and process any timely appeal. A party may appeal to the Deputy Administrator from a decision of the Special Counsel that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the Special Counsel.

§ 105–8.170–11 Hearing.

(a) Upon a timely request for a hearing, the Special Counsel shall take the necessary action to obtain the services of an administrative law judge (ALJ) to conduct the hearing. The ALJ shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date, or there are other extenuating circumstances.

(b) The complainant and respondent shall be parties to the hearing. Any interested person or organization may petition to become a party or amicus curiae. The ALJ may, in his or her discretion, grant such a petition if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and may contribute materially to the proper disposition of the proceedings.

(c) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act). The ALJ shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to—

(1) Arrange and change the date, time, and place of hearings and prehearing conferences and issue notice thereof;

(2) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(3) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(4) Examine witnesses and direct witnesses to testify;

(5) Receive, rule on, exclude, or limit evidence;

(6) Rule on procedural items pending before him or her; and

(7) Take any action permitted to the ALJ as authorized by this subpart, or by the provisions of the Administrative Procedure Act (5 U.S.C. 551–559).

(d) Technical rules of evidence shall not apply to hearings conducted pursuant to this subsection, but rules or principles designed to assure production of credible evidence available and to subject testimony to cross-examination shall be applied by the ALJ whenever reasonably necessary. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made

of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(e) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(1) Persons employed by the agency shall, upon request to the agency by the ALJ, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(2) Employees of other Federal agencies called to testify at a hearing shall, at the request of the ALJ and with the approval of the employing agency, be on official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees.

(3) The fees and expenses of other persons called to testify at a hearig shall be paid by the party requesting their appearance.

(4) The ALJ may require the agency to pay travel expenses necessary for the complainant to attend the hearing.

(5) The respondent shall pay the required expenses and charges for the ALJ and court reporter.

(6) All other expenses shall be paid by the party, the intervening party, or amicus curiae incurring them.

(f) The AJL shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the Special Counsel for Ethics and Civil Rights within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Special Counsel.

(g) Within 15 days after receipt of the recommended decision of the ALJ any party may file exceptions to the decision with the Special Counsel. Thereafter, each party will have ten days to file reply exceptions with the Special Counsel.

§ 105–8.170–12 Decision.

(a) The Special Counsel shall make the decision of the agency based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of recepit of the transmittal of the notice of appeal and investigative record pursuant to § 105–8.170–9(c) or after the period for filing exceptions ends, whichever is applicable. If the Special Counsel for Ethics and Civil Rights determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Special Counsel shall have 60 days from receipt of the additional information to render the decision on the appeal. The Special Counsel shall transmit his or her decision by letter to the parties. The time limits established in this paragraph may be extended with the permission of the Assistant Attorney General. The decision shall set forth the findings, remedial action required, and reasons for the decision. If the decision is based on a hearing record, the Special Counsel shall consider the recommended decision of the ALJ and render a final decision based on the entire record. The Special Counsel may also remand the hearing record to the ALJ for a fuller development of the record.

(b) Any respondent required to take action under the terms of the decision of the agency shall do so promptly. The Official may require a periodic compliance reports specifying—

(1) The manner in which compliance with the provisions of the decision has been achieved;

(2) The reasons any action required by the final decision has not yet been taken; and

(3) The steps being taken to ensure full compliance. The Official may retain responsibility for resolving disagreements that arise between the parties over interpretation of the final agency decision or for specific adjudicatory decisions arising out of implementation.

§ 105–8.170–13 Delegation

The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§ 105–8.171 Complaints against an occupant agency.

(a) Upon notification by an occupant agency that it has received a complete complaint alleging that the agency's program is inaccessible because existing facilities under GSA's control are not accessible and usable by individuals with handicaps, GAS shall be jointly responsible with the agency for resolving the complaint and shall participate in making findings of fact and conclusions of law in prescribing and implementing approriate remedies for each violation found.

(b) GSA shall make reasonable efforts to follow the time frames for complaint resolution that go into effort under the notifying occupant agency's compliance procedures when it receives a complete complaint.

(c) Receipt of a copy of the complete complaint by GSA shall constitute notification to GSA for purposes of § 105–8.171(a).

§§ 105–8.172—105–8.199 [Reserved]

Grant B. Williams, Jr.,

Acting Special Counsel for Ethics and Civil Rights.

Dated: January 26, 1989.

[FR Doc. 6607 Filed 3–21–89; 8:45 am]

BILLING CODE 6820–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

Department of Defense Federal Acquisition Regulation Supplement; Patents

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering a revision to the Defense Federal Acquisition Regulation Supplement (DFARS) to supplement FAR 27.304–1(d). A contract clause is proposed to require Defense contractors to periodically report subject inventions to contracting officers.

DATE: Comments on the proposed rule should be submitted in writing to the Executive Secretary, DAR Council, at the address below, not later than May 22, 1989, to be considered in formulation of a final rule. Please cite DAR Case 85–56D in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ATTN: ODASD(P)DARS, c/o OASD (P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

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

SUPPLEMENTARY INFORMATION:

A. Background

FAR 27.304–1(d) provides that whenever it is desired to require a contractor to provide periodic and final listings of all subject inventions required to be disclosed during the period covered by the report, the contract may be modified to accomplish this. The purpose of this proposed rule is to adopt

a contract clause for use in the Department of Defense to require such reports whenever the clause at FAR 52.227–11 is included in the contract.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it is expected that it will affect only 190 contractors in all. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the act. Such comments must be submitted separately and cite DAR Case 89–610D in correspondence.

C. Paperwork Reduction Act

The rule does contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq. The information collection request has been submitted to OMB for their review and approval.

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore it is proposed that 48 CFR Parts 227 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 227 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 227—PATENTS, DATA, AND COPYRIGHTS

2. Section 227.303 is added to read as follows:

§ 227.303 Contract clauses.

(S–70) Pursuant to FAR 27.304–1(d), the contracting officer shall insert the clause at 252.227–7039 in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.227–7039 is added to read as follows:

§ 252.227–7039 Patents—reporting of subject inventions.

As prescribed at 227.303, insert the following clause:

Patents—Reporting of Subject Inventions (1988)

The Contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the Contractor has retained title.

(d) Upon request, the Contractor shall furnish the Government as irrevocable power to inspect and make copies of the patent application file.

(End of clause)

[FR Doc. 89–6770 Filed 3–21–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–14; Notice 02]

RIN 2127–AB84

Federal Motor Vehicle Safety Standard; School Bus Passenger Seating and Crash Protection; Termination of Rulemaking

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Termination of rulemaking; denial of petition.

SUMMARY: This notice terminates a rulemaking proceeding to decide whether to amend Safety Standard No. 222, *School Bus Passenger Seating and Crash Protection,* to specify certain requirements for safety belts voluntarily installed on school buses having gross vehicle weight ratings (GVWR's) greater than 10,000 pounds.

A notice proposing these requirements was published on October 10, 1985. The notice followed the agency's granting of a petition for rulemaking from Wayne Corporation (Wayne) requesting that voluntarily installed belts be required to meet the same specifications currently applicable to safety belts on lighter school buses, i.e., those with GVWR's of 10,000 pounds or less. The proposal specifically requested comments on whether there is a safety need for the amendment sought by the petitioner and whether there are other, voluntary means, which could be undertaken to ensure that voluntarily installed safety belts on large school buses provide an acceptable level of safety.

The agency has decided not to amend Standard No. 222 as proposed in the October 1985 notice since information available to the agency indicates that safety belts on new large school buses are currently installed in a manner that ensures adequate safty performance. That is, most, if not all, are voluntarily installed by the major school bus manufacturers in a manner that complies with the amendments proposed by that notice. Further, the agency believes that terminating rulemaking on this action is consistent with the President's October 1987 Executive Order on "Federalism" (E.O. 12612) since all indications are that States and local jurisdictions have been effectively deciding how safety belts on their large school buses will be installed in the absence of Federal regulation and that they will continue to make effective decisions regarding this issue.

The agency is aware that the issuance of the proposal may have engendered some belief that the agency was sanctioning the installation of safety belts on large school buses. The agency repeats its longstanding position that there is no safety justification for a Federal requirement for safety belts on large school buses.

This notice also denies a petition for rulemaking from the National Coalition for Seatbelts on School Buses requesting that NHTSA require manufacturers to install safety belt anchorages on all new school buses and "offer the hardware and seat belt assemblies designed for their school bus seats." The agency has denied the petition because petitioner has provided no information demonstrating a safety need for the requested amendment.

FOR FURTHER INFORMATION CONTACT: Mr. Guy Hunter, Office of Vehicle Safety Standards, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366–4915.

SUPPLEMENTARY INFORMATION: This notice terminates rulemaking begun in October 1985, when this agency published a notice of proposed rulemaking (NPRM) (50 FR 41368) in response to a petition for rulemaking submitted by Wayne Corporation, a

school bus manufacturer. Specifically, this notice terminates rulemaking on whether Federal Motor Vehicle Safety Standard (FMVSS) No. 222, *School Bus Passenger Seating and Crash Protection*, should be amended to specify performance requirements for safety belts voluntarily installed on school buses with gross vehicle weight ratings (GVWR) greater than 10,000 pounds. The performance specifications that had been proposed for safety belts on large school buses are the same as those currently applicable to safety belts on school buses with a GVWR of 10,000 pounds or less. Safety belts on these lighter school buses must meet the requirements of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208), No. 209, *Seat Belt Assemblies* (49 CFR 571.209), and Standard No. 210, *Seat Belt Anchorages* (49 CFR 571.210), as they apply to multipurpose passenger vehicle.

Background

History of Standard No. 222. The Motor Vehicle and Schoolbus Safety Amendments of 1974 directed NHTSA to issue motor vehicle safety standards applicable to school buses and school bus equipment. In response to this legislation, NHTSA revised several of its safety standards to improve existing requirements for school buses or extend ones for other vehicle classes to those buses. NHTSA also issued Safety Standard No. 222, one of a set of new standards for school buses, to improve protection to school bus passenger during crashes and sudden driving maneuvers.

Standard No. 222 establishes occupant protection requirements for school bus seating positions and restraining barriers. Its requirements for school buses with GVWR's of 10,000 pounds or less differ from those set for school buses with GVWR's greater than 10,000 pounds, because the "crash pulse" or deceleration experienced by the lighter vehicles is more severe than that of larger vehicles in similar collisions. For the lighter vehicles, the standard includes requirements that all seating positions other than the driver's seat be capable of meeting the same requirements as those of Standards No. 208, No. 209 and No. 210 applicable to multipurpose passenger vehicles. Lighter school buses must be equipped with properly installed safety belt assemblies and anchorages for passengers. NHTSA decided that safety belts are necessary on lighter school buses to provide adequate crash protection for the occupants. (The driver's seating position is required to have a safety belt under Standard No. 208's requirements for buses.)

For the heavier school buses, Standard No. 222 relies on requirements for "compartmentalization" to provide passenger crash protection. Investigations of school bus accidents prior to issuance of Standard No. 222 found the school bus seat was a significant factor in causing injury. NHTSA found that the seat failed the passengers in three principal respects: by being too weak, too low, and too hostile. (39 FR 27584; July 30, 1974.) In response to this, NHTSA developed a set of requirements which improved the performance of school bus seats, and further improved the crashworthiness of school buses by employing the seats in a unique type of passenger crash protection. Those requirements, which comprise the "compartmentalization" approach, are directed toward ensuring that passengers are cushioned and contained by the seats in a school bus accident.

Compartmentalization requires school bus seats to be positioned in a manner that provides a compact, protected area surrounding each seat. If a seat is not compartmentalized by a seat back in front of it, compartmentalization must be provided by a restraining barrier. The seats and restraining barriers must be strong enough to maintain their integrity in a crash yet flexible enough to be capable of deflecting in a manner which absorbs the energy of the occupant. They must meet specified height requirements and be constructed, by use of substantial padding or other means, so that they provide protection when they are impacted by the head and legs of a passenger.

NHTSA believes it is helpful to highlight the following points about compartmentalization: (1) Compartmentalization minimizes the hostility of the crash environment and limits the range of movement of an occupant, without need for safety belts to provide effective occupant crash protection; (2) compartmentalization ensures that high levels of crash protection are provided to each passenger independent of any action on the part of the occupant; and (3) safety belts are needed on passenger cars, but not on large school buses, because in additional to meeting Federal school bus safety standards which are specially tailored to the problems of school bus safety and which substantially lessen the risks of injury or death on a school bus, large school buses are inherently safer vehicles because they are larger and heavier than the vast majority of the other vehicles on the road, the training and qualification requirements for their drivers and the extra care taken by other road users in their vicinity.

The excellent safety record of school buses reflects the influence of these factors. According to the agency's records, over the past 10 years, school bus occupants have sustained an average of 15 fatal injuries each year. While each of these fatalities is tragic, the number of school bus occupant fatalities is small compared to occupant fatalities in all other types of motor vehicles. In 1987, for example, there were 38,544 occupant deaths in motor vehicles other than school buses, which includes 5,663 deaths among children aged five to 18. These fatalities for 1987 are similar in number to those of other recent years.

School buses, which together travel 3.3 billion miles each year, are one of the safest means of travel. On a vehicle-mile basis, there are 0.5 school bus fatalities per hundred million vehicle miles travelled, compared to 1.9 occupant fatalities per hundred million vehicle miles in passenger cars—i.e., school buses are about four times safer than passenger cars on a per-vehicle mile basis. Moreover, since a school bus typically carries many more occupants than a passenger car, the comparison on a per-passenger-mile basis would be even more favorable for school buses.

In March, 1987, the National Transportation Safety Board (NTSB) issued a report on the crash performance of large school buses manufactured after the April 1, 1977 effective date of FMVSS No. 222 and the rest of the comprehensive school bus safety standards NHTSA issued pursuant to the 1974 Schoolbus Safety Amendments. The NTSB found that these school buses are extremely safe compared to other modes of transportation, and that the compartmentalization approach worked well in the school bus crashes that the Safety Board investigated. Moreover, the NTSB concluded that safety belts probably would have made no change in the total number of school bus passengers killed in the crashes investigated by the Board for its study. The report states:

> Based on the findings of this study, the Safety Board does not recommend that States or school districts allocate funds to retrofit or order large poststandard schoolbuses with lap belts for passengers. The Safety Board also does not recommend that Federal schoolbus safety standards be amended to require that all new large schoolbuses be equipped with lap belts for passengers. The safety benefits of such actions, both in terms of reduced injuries for schoolbus passengers

and in seat belt use habit formation, have not been proven.

* * * * *

If money is to be spent to increase the safety of schoolbus passengers, there are more effective ways of allocating funds to increase the chance of a greater safety payoff than introduction of restraint systems for passengers. * * * [Clearly], rapid retirement of any prestandard schoolbuses in the fleet and their replacement by poststandard buses should be a top priority.

(Safety Study—Crashworthiness of Large Poststandard Schoolbuses, NTSB/SS–87/01, March 18, 1987.)

Petitions to Require Safety Belts. The agency has repeatedly been petitioned in the past to require safety belts for passengers on large school buses. NHTSA denied those requests, explaining that currently mandated occupant protections in large school buses provide an acceptable level of safety protection. Since the level of safety provided by school buses meeting current school bus safety standards is already high, NHTSA believes there is no safety need for necessitating the installation of safety belts.

Further, it is difficult to justify a Federal requirement mandating safety belts for passengers in large school buses in light of the implications of such a requirement on pupil transportation costs. As a result of such a requirement, school bus purchasers would have to buy belt-equipped vehicles regardless of whether safety belts would be appropriate for their needs. NHTSA does not believe those costs should be imposed on all purchasers of school buses when large school buses are currently very safe. In the area of school bus safety especially, persons responsible for school bus safety might want to consider other alternative investments to improve their pupil transportation programs which can be more effective at reducing fatalities and injuries than safety belts, such as installing stop arms, acquiring special school bus mirrors, and implementing pupil pedestrian education programs. Since each of these efforts competes for limited funds, the agency believes that those administrators should decide how their funds should be allocated.

Preemption: The general principle of Federal preemption set forth in section 103(d) of the Vehicle Safety Act is that once NHTSA adopts and puts into effect a safety standard on a particular aspect of motor vehicle performance, States may address that aspect by adopting and enforcing the same standard, but they cannot set a different standard for that aspect. Section 103(d) provides that:

Whenever a Federal motor vehicle safety standard under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

The first sentence of section 103(d) has the effect of preempting safety standards of the States and their political subdivisions that regulate the same aspect of vehicle or equipment performance as a Federal safety standard unless they are identical to that safety standard. Since the Federal safety standards address the crash protection of the passengers of large school buses with provisions that do not require the installation of safety belts, section 103(d) preempts State standards that conflict with those Federal standards by requiring safety belts on all large school buses.

However, the second sentence of § 103(d) provides that the limitation on State safety standards does not prevent governmental entities from specifying nonidentical safety requirements for vehicles procured for their own use if those requirements impose a higher standard of performance than an applicable Federal standard. The agency has historically maintained that the second sentence of § 103(d) permits a State to require additional safety equipment such as safety belts for its large school buses since with sufficient monitoring of belt usage, the belts could be beneficial in some instances. Further, as explained in the NPRM, individual school bus purchasers wishing to have safety belts are not precluded by Federal law from ordering their large buses with safety belts.

Wayne's Petition. The issue raised by the Wayne petition involved the performance capabilities of voluntarily installed safety belts on large school buses. ("Voluntarily installed" safety belts refers to belts installed by manufacturers for passengers on large school buses pursuant to the desires of States, local school districts and other school bus purchasers.) While person supplying safety belt assemblies for school buses are currently required to sell only assemblies which comply with FMVSS No. 209, no requirements apply at this time to the installation and performance of the passenger safety belts on large school buses. Wayne argued that absent Federal safety requirements governing the manner of installation of voluntarily installed safety belts on large school buses, improper installation can occur.

The agency issued a notice granting the petition because it found merit with the petitioner's argument that requiring conformance to safety standards would clear up any confusion about the performance of safety belts voluntarily installed in large school buses and ensure that when safety belts are ordered for those vehicles, their assemblies and anchorages are capable of providing an acceptable level of safety. The notice proposed to amend Standard No. 222 to require voluntarily installed safety belts for passengers on school buses with GVWR's greater than 10,000 pounds to meet the specifications currently applicable to safety belts on school buses with GVWR's of 10,000 pounds or less—i.e., the same requirements as those of FMVSS No. 208, No. 209, and No. 210 that apply to multipurpose passenger vehicles.

Termination of Rulemaking

There were eighteen comments to the proposal, representing sharply differing opinions whether the proposed performance requirements for safety belts on large school buses should be adopted. All comments were considered. The following discussion addresses the major comments germane to this termination and explains the agency's decision not to adopt the proposed requirements for safety belts.

Voluntary Compliance

The purpose of the agency's proposal was to ensure that safety belts installed on new large school buses would be installed in a manner providing adequate levels of safety to seated occupants. While proposing the new requirements, the agency also requested commenters to address whether voluntary means were adequate to ensure that voluntarily installed safety belts in large school buses provide an acceptable level of safety. The agency's request was based on a position paper from the School Bus Manufacturers Institute, included by Wayne in its petition, which recommended that bus manufacturers voluntarily comply with all the applicable standards when they install belts in new large school buses. The Institute's paper is an indication that school bus manufacturers already install safety belts in large school buses in voluntary compliance with the requirements for safety belts in the lighter school buses.

Major school bus manufacturers responding to the NPRM confirmed that they presently install safety belts on large school buses in voluntary compliance with requirements identical to those proposed for such installation. Thomas Built Buses said that it will not install a safety belt in a large school bus unless it complies with Standards No. 208, 209 and 210. Blue Bird Body Company stated that it has been voluntarily meeting the proposed requirements when safety belts are ordered and installed in large school buses. The agency is not aware of any school bus manufacturer that does not already comply with the proposed requirements and has no indication that the proposed rulemaking is necessary to avoid confusion in this area.

The agency realizes that widespread voluntary compliance of school bus manufacturers with the proposed requirements for safety belt installation might not ensure absolutely that improper installation cannot occur. The National Coalition for Seatbelts on School Buses (NCSSB) gave three examples of "improper factory seat belt installations" occurring in Vermont, Illinois and Georgia. NCSSB said that new buses delivered in the first instance had "webbings * * * tied to the seat frame." In the Illinois example, "Belts were attached to the walls of the bus and the aisle belts were attached to the aisle leg and allowed to dangle on the floor thus presenting a tripping hazard." NCSSB said a manufacturer in Georgia installed "airplane type" seat belt assemblies. NCSSB believed these three examples illustrated the need for adopting the proposed amendments to Standard No. 222.

The agency received no specific reports of alleged improper safety belt installations by any commenter other than the NCSSB. NHTSA has no evidence to conclude that the alleged improper belt installations were anything other than isolated instances. In light of statements of voluntary compliance with the proposed seat belt requirements by major school bus manufacturers in response to the NPRM, and given the position of the School Bus Manufacturers Institute advocating voluntary compliance with those standards, the agency believes belts installed on new large school buses are generally in conformance with the proposed requirements.

The agency recognizes that persons retrofitting used school buses with safety belts are not required to meet Federal requirements for safety belt installation. However, this type of "aftermarket" installation of safety belts could not have been included in the coverage of Standard No. 222 and any amendments thereto regardless of whether the agency's proposed amendments for safety belt installation were adopted. This is because Federal motor vehicle safety standards applicable to motor vehicles apply to *new* vehicles only. Thus, neither continuation nor termination of this rulemaking action would have any effect on the manner in which safety belts could be installed on *used* school buses. NHTSA notes that Standard No. 209 currently precludes the sale of "airplane type" seat belts for installation on any type of motor vehicles and that this requirement is unchanged by the agency's termination of rulemaking.

The agency acknowledges that adoption of the proposed amendments would affect the manner in which safety belts are installed in new vehicles by vehicle "alterers." An alterer is a person who modifies a new vehicle prior to the first sale of the vehicle for purposes other than resale. If the proposal had been adopted, alterers installing safety belts would have had to ensure that the installation conformed to the requirements of Standards Nos. 208, 209 and 210. Thus, alterers retrofitting belts on new school buses would have been subject to the adopted requirements. However, the agency believes few, if any, alterers install belts on new school buses. Instead, belt installation is done primarily by school bus manufacturers who are subject to potential liability for any improper installation and who, as explained above, voluntarily comply with Federal requirements for such installation. Termination of this rulemaking would thus have little if any affect on the aftermarket installation of belts on *new* school buses.

Federalism

On October 26, 1987, the President issued Executive Order 12612 which directed the executive agencies to carefully consider fundamental federalism principles when implementing policies having federalism implications. Among those principles is the recognition that individual States and communities are free to experiment with a variety of approaches to public issues. The President's order directs agencies "to recognize the distinction between problems of national scope (which may justify Federal action) and problems that are merely common to the States (which will not justify Federal action because individual States, acting individually or together, can effectively deal with them)."

The agency believes that this termination of rulemaking is consistent with E.O. 12612 in that it recognizes that States and local jurisdictions have been formulating their own solutions to the issues addressed by the rulemaking proposal on safety belts for large school buses. A number of States and school districts have been ordering new large school buses equipped with safety belts and school bus manufacturers have been installing the belts in voluntary compliance with Federal safety standards. There is no need for supplementary Federal action to provide a uniform national standard.

Some of the proponents of the proposed amendments believed that adoption of the proposal is in the interest of safety since persons wishing to have safety belts installed on their large school buses who are able to specify a range of performance criteria for the belts do not now which belt specifications to include in their vehicle purchase orders. Proponents believed that the rule would alleviate the burdens associated with choosing safety belt specifications and thereby remove a deterrent preventing some school bus purchasers from obtaining buses equipped with safety belts.

The agency does not agree that school bus purchasers wishing to order safety belts are prevented from doing so in the absence of Federal regulation for belt performance. To adhere to such a view overstates the potential effect of the Federal government on the school bus procurement process. The absence of Federal regulation does not prevent any State or local jurdiction from specifying on its own how the belts should be installed in its school buses. For example, the State of New York has proceeded to require safety belts on its large school buses and has required these belts to meet the specifications for belts on small school buses. In response to the Wisconsin School Bus Association who asked whether standards applicable to small buses can be extended to larger, more massive school buses, NHTSA is not aware of any data indicating that the load requirements applicable to safety belts on smaller school buses are inappropriate—i.e., unsafe—for seats on larger school buses.

A question beyond that asked by the Wisconsin association, but one carefully considered by NHTSA, is whether States could require performance and installation criteria for belts on small school buses that differ from those applicable to belts on small school buses. The question arises only in the aftermath of the agency's decision to terminate rulemaking since adoption of the proposal would have prevented

differing standards. This is because of the Federal preemption clause of the Vehicle Safety Act, explained above, which would have made controlling the Federal requirements for safety belt installation had they been adopted and precluded States from requiring nonidentical performance requirements.

However, consistent with E.O. 12612, this termination of the rulemaking action has left unaffected current State authority to set the performance and installation standards for the safety belts on their large school buses. States can follow New York's example and elect to specify the same performance criteria for their belts on large school buses as that proposed by the agency and voluntarily met by school bus manufacturers. They can also specify non-identical critiera that also meet the need for safety and which are specially fashioned for their particular needs, provided that these criteria do not conflict with the vehicle's complaince with applicable Federal requirements. For example, manufacturers are provided leeway in the aftermath of this termination as to the number of safety belts they may install on school bus bench seats, a matter which would have been foreclosed by the adoption of the proposal.

Correspondence from school bus manufacturers to this agency indicate that some school bus purchasers order only two sets of safety belts for each 39-inch bench seat. Currently, Standard No. 222 permits the vehicle manufacturer to fulfill the order although the manufacturer must ensure that the bench seat is capable of providing crash protection for three passengers (the maximum number of possible occupants of the bench seat). If the standard were amended as proposed, the two-belt installation would no longer be permissible since the standard would require a belt for each seating position—i.e., a total of three belts for the three seating positions on a 39-inch bench seat. The agency has no reason to deny school bus purchasers the flexibility of ordering the two-belt configuration when it accords with their purchasing needs and the installation can be safely done.

Implied Endorsement

The Maryland Department of Education opposed the rulemaking action because it was concerned that adoption of the proposed amendments could be construed as an endorsement by NHTSA of safety belts on large school buses. That commenter believed that the rulemaking should be terminated if no greater safety benefis from safety belts could be shown.

The rulemaking action is being terminated primarily due to the voluntary compliance of manufacturers with the proposed amendments. The agency takes the opportunity provided by the termination to iterate its longstanding position of not endorsing the installation of safety belts for passengers on large school buses. As explained in detail in the above "Background" section, the agency believes belts are not necessary to provide adequate crash protection to passengers on large school buses.

The agency urges all persons deciding whether to order safety belts on their large school buses to fully consider all aspects of school bus safety, including the excellent safety record of large school buses and the benefits of allocating resources to belts as opposed to alternative safety measures, such as further improving pupil transportation programs; the purchaser's capability to ensure that the belts are used; and, as discussed below, the consequences attendant with unused safety belts. Commenters also raised concerns about the compatibility of belts with compartmentalization and asked whether lap belts reduce the safety of school bus passengers. This issue also is discussed below.

Safety implications: the "domino effect." The agency strongly recommends that persons wishing to order safety belts on large school buses should ensure use of the belts by all passengers while the vehicle is in motion to avoid increased risk of seat failure in severe frontal collision due to a phenomenon known as the "domino effect." The domino effect refers to seat failure resulting from a load application of two different forces on a particular school bus seat. These loads result from *combined* stresses exerted simultaneously or in close succession on the seat by: (1) The belted occupant of the seat, where the seat belt is attached to the seat frame; and (2) an unbelted occupant, seated directly rearward of the particular seat, impacting the seat back. The effect of the *combined* forces is at issue; a seat on a large school bus would be able to withstand separately the load generated by either the seat belt or the rearward seated passenger.

Thomas Built Buses has asked the agency to acknowledge that the domino effect can increase the chances of seat failure and thereby increase the likelihood that belted passengers could become trapped in their seats because the deformation that could result from the combined load might make accessibility of the seat belt release mechanisms more difficult. The agency agrees that the combined force applications on a particular seat resulting from a belted occupant and an unbelted passenger in the seat to the rear could increase the likelihood of seat failure or the amount of seat deformation. The agency emphasizes, however, that the combined loads described by Thomas resulting in possible critical seat deformation would likely be generated in frontal collissions of *severe* magnitude only, and not in collisions at lower speeds.

Thomas asked the agency's opinion about the desirability of that manufacturer providing informational labeling on its large belt-equipped school buses. The labels would inform owners and occupants of the vheicles that the full protective benefits of compartmentalization and safety belts are only achieved with all occupants in successive rows being unbelted. The labels would be intended to warn vehicle owners and occupants of the dangers of the domino effect and to urge the safe use of safety belts with compartmentalization.

NHTSA does not believe that school buses are frequently involved in the type of severe frontal crash in which the domino effect is likely to occur and therefore does not believe it is necssary at this time to address the safety effects of the phenomenon by requiring the type of labeling suggested by Thomas. However, there is no prohibition on Thomas' labeling its large belt-equipped school buses in the manner described by the manufacturer and NHTSA commends the voluntary step taken to ensure that school bus safety belts will be properly used.

The "jackknife effect." A number of commenters responding to the NPRM objected to the rulemaking action because they were concerned about the compatibility of safety belts with compartmentalization requirements. Commenters raised issues relating to a January 1985 Transport Canada report on the performance of lap belts in frontal impacts (School Bus Safety Study, January 1985). The study provided data comparing the reaction of three belted and three unbelted 5th percentile adult female anthropomorphic test dummies in a 48 km/h (or 30 mph) frontal collision of a large school bus meeting compartmentalization requirements. The results indicated that the belted dumies experienced higher head accelerations, lower chest accelerations and more severe neck extension than did the unbelted ones. Accordingly, the study concluded that the use of a lap belt system in a school bus "may result in more severe head

and neck injuries for a belted occupant than an unbelted one, in a severe frontal collision."

The Canadian report explained that because students transported in a compartmentalized school bus tend to sit more upright on the seats, in a frontal collision an unbelted occupant slides forward into the padded back of the seat in front of his or her seating position. This results in forces being spread more evenly over the unbelted occupant's upper torso and reduces the forces applied directly to the head. On the other hand, when safety belts are used on school buses, the forces cannot be evenly distributed over the upper torso in a frontal collision. Instead, the belted occupant, upper torso rotates around the lap belt, causing the occupant's head to bear a concentrated load as it strikes the forward seat back. This phenomenon is termed the "jackknife effect."

Some commenters believed the Canadian study raised questions about the safety of lap belts on large school buses. The New York School Bus Contractors Association urged NHTSA to determine whether lap belts negatively affect the safety provided by compartmentalization. The National School Transportation Association argued that a rulemaking action to set standards for safety belt performance should proceed only if passengers' safety will be enhanced and not compromised by safety belts.

NHTSA shares commenters' concerns about any implications that safety belts negatively affect the protection provided to passengers on large school buses. However, the agency is not aware of accident data showing an injury caused or made more serious by the presence of safety belts on a school bus. Furthermore, NHTSA cannot conclude from the Canadian report's findings that belts actually degrade the benefits of compartmentalization to the extent that the supplemental restraint system renders inoperative the safety of large school buses, but the possibility exists that the occupant kinematics shown in the Canadian tests could occur.

The Canadian test involved a 48 km/h frontal barrier crash test representative of relatively few actual school bus crashes of unusual severity. Questions concerning whether safety belts would provide benefits in other types of crashes, such as side impacts or rollovers, were not addressed. Safety belts on large school buses could provide some safety benefits, such as additional protection to the chest area and some hip restraint against lateral movement. Although these benefits are not significant enough to justify a Federal requirement for the installation of safety belts on all large school buses, they are enough to provide a basis upon which the agency will decline to prohibit the installation of belts on large school buses.

The Superintendent of Public Instruction of Washington State raised another concern related to the results of the Canadian study. That commenter suggested, as did others, that NHTSA consider amending Standard No. 222 to permit increased distances between seats if safety belts are installed on large school buses. The Stevens Point Area Public School District of Stevens Point, Wisconsin believed that past studies indicated that 40 inches of unobstructive area must exist in front of a belted occupant to avoid potential injury to a passenger's head and neck. That commenter felt that the passenger seats on a large school bus should be spaced in such a way that if safety belts were installed, enough unobstructed area exists to ensure that no impact with seat backs occurs.

The agency does not believe that the type of action requested by these commenters is desirable. NHTSA iterates that it does not have clear evidence, such as injury data, showing that belts should either be prohibited or that supplementary actions are needed to reduce unsafe HIC levels to passengers resulting from installation of safety belts. Further, while NHTSA appreciates the innovative suggestions of Washington State and Stevens Point, the agency cannot agree that increasing seat spacing is an appropriate action in any event. Compartmentalization has been determined to be the most appropriate means of occupant crash protection for large school buses in part due to its ability to ensure protection for each passenger occupying a designated seating position. Unlike safety belts, compartmentalization requires no action by the school bus passenger. If safety belts were installed on a large school bus and seat spacing were increased, the "automatic" nature of compartmentalization will be destroyed and passengers who do not use their safety belt will not have the benefits of either system. Since such an outcome is unacceptable, the agency denies requests to permit greater distances between seats when safety belts are installed.

Denial of Petition

The comment of the NCSSB included a petition for rulemaking to amend Standard No. 222 to require installation of safety belt anchorages on all new school buses and to require school bus manufacturers to "offer the hardware and seat belt assemblies designed for their school bus seats." The NCSSB asserted in its petition that the agency must acknowledge installation problems at the aftermarket level since, by granting the Wayne petition, NHTSA has acknowledged problems at the manufacturer's level. The NCSSB cited instances of various school districts experiencing improper safety belt installations to support its argument that an amendment is needed to require seat belt anchorages on all school buses.

NHTSA has been requested in the past to require installation of seat belt anchorages on large school buses. One request was denied because no data could be found to substantiate petitioners' claims that school bus seats were not strong enough to carry belt loads or that some seat designs cause belts to fail to perform properly. 48 FR 47032 (October 17, 1983). Another request was denied because no information indicated that a substantial number of school buses would be equipped with the belts or that steps would be taken to assure the proper use of the belts. 41 FR 28506 (July 12, 1976). The NCSSB included no information or data in its petition to support its claim that seat belt anchorages are needed on all school buses aside from citing four examples of improper belt installation and relying on the then-proposed rulemaking action.

The agency does not agree that the proposed rule implied that seat belt anchorages should be required on all school buses. The proposal was intended to ensure that safety belts, *when voluntarily installed* on large school buses, met adequate performance requirements. It would not have required installation of belts on school buses or installation of seat belt anchorages, since such requirements are not needed for large school buses to be safe. Requiring installation of seat belt anchorages for all school buses regardless of whether safety belts will be installed or used goes several steps further than the proposal and is not substantiated by a safety need. Since no demonstration has been made that large school buses are unsafe without seat belt anchorages or that a requirement for anchorages can be substantiated by a safety need, the agency has determined that there is no reasonable possibility that the order requested by the NCSSB would be issued at the conclusion of a rulemaking proceeding. Accordingly, the NCSSB petition is denied.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

Issued on March 16, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-6712 Filed 3-21-89; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 54, No. 54
Wednesday, March 22, 1989

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

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 17, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information.

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

• Agricultural Marketing Service.

Filberts Grown in Oregon and Washington, Marketing Order No. 982.

Recordkeeping; On occasion; Weekly; Monthly; Semi-annually; Annually.

Businesses or other for-profit; 365 responses; 332 hours; not applicable under 3504(h).

Virginia M. Olson (202) 475–3930.

• Food and Nutrition Service.

State Plans, Operating Guidelines, Forms and Waivers: FNS 366A, 366B.

Annually.

State or local governments; 203 responses; 3,246 hours; not applicable under 3504(h).

Abigail C. Nichols (703) 756–3414.

Extension

• Food Safety and Inspection Service.

Regulations Governing Meat Inspection: FSIS 6410–1 , FSIS 6410–5, FSIS 6410–6, FSIS 6510–5, FSIS 5200–5, FSIS 7234–1, FSIS 7227, FSIS 8820–2, FSIS 10,000–2, FSIS 10,110–1, FSIS 7350–1, FSIS 8140–2, FSIS 9540–1, FSIS 8822–4, MP 403–10, MP 216, MP 2.

Recordkeeping; On occasion; Quarterly.

State or local governments; Business or other for-profit; Federal agencies or employees; Small Businesses or organization; 2,803,706 responses; 212,258 hours.

Roy Purdie, Jr. (202) 447–5372.

• Agricultural Stabilization and Conservation Service.

Request for Long-Term Agreement (Forestry Incentives Program): FIP–11.

On occasion.

Individuals or households; 125 responses; 42 hours; not applicable under 3504(h).

Priscilla L. Wright (202) 447–5783.

• Food and Nutrition Service.

7 CFR Part 210—National School Lunch Program.

None.

Monthly; Quarterly; Annually; Biennially.

State or local governments; Federal agencies or employees; Non-profit institutions; 2,124,417 responses; 22,462,157 hours; not applicable under 3504(h).

Marian L. Stroud (703) 756–3598.

Reinstatement

• Farmers Home Administration.

7 CFR 1951–S, Farmer Program Account Servicing Policies: FmHA 1951–39, 1951–39A.

On occasion.

Individuals or households; State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 349,983 responses; 150,998 hours; not applicable under 3504(h).

Jack Holston (202) 382–9736.

• Agricultural Stabilization and Conservation Service.

Conservation Reserve Program Worksheet, Appendix, Addendum, Worksheet & 7 CFR Part 704, Conservation Reserve Program (CRP) Regulations: CRP–1, CRP–1 Appendix, CRP–1A Addendum, CRP–10 Addendum, CRP–1D Addendum, CRP–1E Addendum, and 7 CFR Part 704.

On occasion; Annually.

Individuals or households; State or local governments; Farms; 1,590,000 responses; 99,400 hours; not applicable under 3504(h).

Charles W. Sims (202) 447–7334.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 89–6782 Filed 3–21–89; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Stabilization and Conservation Service

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Agricultural Stablization and Conservation Service, USDA.

ACTION: Publication of list of warehouses licensed under the U.S. Warehouse Act and availability of list of cancellations and/or terminations occurring during calendar year 1988.

Notice is hereby given that the Agricultural Stabilization and Conservation Service has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1988, as required by section 26 of that Act (7 U.S.C. 266). Also available is a list of cancellations and/or terminations that occurred during calendar year 1988. A copy of the list of warehouses as of December 31, 1988, will be distributed to all licensed warehousemen. Other interested parties may obtain a copy of either list from: Mrs. Judy Fry, ASCS,

Warehouse Division, Warehouse Licensing Branch, U.S. Department of Agriculture, P.O. Box 2415, Room 5968, South Agriculture Bldg., Washington, D.C. 20013. Telephone: 202–447–3822.

Signed at Washington, DC, March 16, 1989.

Milt Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–6683 Filed 3–21–89; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Draft Supplement to the Final Environmental Impact Statement for the Hoosier National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Draft and Final Supplement (DSEIS and SEIS respectively) to the Environmental Impact Statement (EIS) previously prepared for the Hoosier National Forest Land and Resource Management Plan (Hoosier Plan). The supplement is for a proposed action to consider: (1) Reducing the amount of land classified as suitable for timber production, (2) reducing the annual allowable sale quantity, (3) increasing the use of uneven-aged silvicultural practices, (4) reevaluating the management indicator species, (5) increasing the number of acres classified as research natural and special interest areas, (6) establishing "natural appearing forest" areas and "old forest" habitats, (7) improving the distribution of various wildlife habitats throughout the Forest to create a diverse balance of vegetation types and age classes, and (8) improving the quality of hardwood timber types through widely distributed timber management activities. The supplement will likely result in a significant amendment to the Hoosier Plan.

The proposed action will not include additional analysis or recommendations on future wilderness designations, or the April 3, 1987 decision which prohibited off-road vehicle use areas on the Forest.

In addition, the agency gives notice that a full environmental analysis and decision-making process will occur on the proposal so that interested persons are aware of how they may participate and contribute to the final decision.

The agency will accept written comments and suggestions on the scope of the analysis. However, because the Forest has been communicating with interested persons concerning the scope of the proposed action through prior negotiations and meetings, the agency urges that any comments on the proposal be concise. Comments directed to the substance, as opposed to the scope, of the proposal are more appropriately submitted during the comment period following release of the DSEIS. General notice to the public concerning the scope of the analysis will be provided by a newsletter and/or news releases.

DATE: Comments related to the scope of the analysis should be received by April 21, 1989 to ensure timely consideration.

ADDRESS: Submit written comments and suggestions related to the scope of analysis to Francis J. Voytas, Forest Supervisor, Hoosier National Forest, 811 Constitution Avenue, Bedford, IN 47421.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and SEIS to David F. Barone, Hoosier National Forest Planning Team Leader, Hoosier National Forest, Bedford, IN 47421, (phone 812–275–5987).

SUPPLEMENTARY INFORMATION: The Hoosier Plan was approved by Regional Forester Floyd J. Marita on September 15, 1985. Several administrative appeals challenging the Plan were filed, which were then suspended by the Chief on July 1, 1987 pending reanalysis. In response to the Chief's instructions, a working group was formed to represent the various parties to the appeals in a negotiation process. In January of 1988, formal negotiation began under the direction of professional mediators. After 6 months of negotiations, talks stalled and the parties reached an impasse. The proposed action is intended to resolve various controversies surrounding the Hoosier Plan that were not resolved in the negotiations.

Under the proposed action, and in response to public comment, increased emphasis will be placed on uneven-aged timber management practices. The allowable sale quantity is also expected to be lowered. However, the proposed action is not intended to affect the Hoosier's historic use by hunters and other wildlife enthusiasts. The establishment of aquatic habitats and permanent wildlife openings is expected to result from the supplemental analysis.

One goal of the supplemental analysis is to maintain a diverse mix of plant and animal communities on the Forest. To this end, the management indicator species for the Forest will be reevaluated. Special emphasis will be given to the management of areas for potential as research natural areas (RNAs), and to increasing the forest acreage reserved as areas of unique geological, biological, ecological, cultural, or scientific value. In addition, it is expected that certain areas subject to controversy during the previous negotiating sessions will be managed for their potential as "naturally appearing" forests or "old forest" habitat.

Another goal of the proposed action is to design the Forest's timber program to ensure that benefits exceed costs, while still being responsive to existing market conditions. Sale offerings and product mixes may be adjusted to satisfy market conditions.

Until the SEIS is issued, the forest will continue to be managed according to the terms and conditions of the "interim management direction" developed as a result of the negotiations.

A range of possible alternatives to be considered includes the proposed action, a "no harvest" alternative, an "uneven-aged management only" alternative, as well as the Hoosier Plan itself. A preferred alternative will be identified in the DSEIS.

The DSEIS is expected to be filed with the EPA and to be available for public review in September of 1989. At that time, EPA will publish a notice of availability of the draft supplement in the **Federal Register.**

The comment period on the DSEIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register.** It is critical that those persons interested in the management of the Hoosier National Forest participate at this time. Comments on the DSEIS should be specific, and may address the adequacy of the supplement or the merits of the alternatives discussed (*see* the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

After the comment period ends on the DSEIS, the comments will be analyzed and considered by the agency in preparing the final supplement. Comments that are encyclopedic in nature do little to inform the agency, and often only serve to obfuscate the agency's desire to meaningfully consider the comments and respond to them in the final SEIS.

The SEIS is scheduled to be completed and available to the public approximately 8 months following the close of the review period for the DSEIS. The responsible Forest Service official will document the decision and the

reasons supporting it in a Record of Decision. That decision will be subject to appeal pursuant to 36 CFR 217.

The Forest Service official responsible for approving the proposed action is Regional Forester Floyd J. Marita, Eastern Region, 310 W. Wisconsin Ave., Rm. 500, Milwaukee, WI, 53203.

Date: March 16, 1989.

Floyd J. Marita,

Regional Forester.

[FR Doc. 89-6784 Filed 3-21-89; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Tributary of Evitts Run Watershed, WV

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tributary of Evitts Run Watershed, Jefferson County, WV.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, WV 26505, telephone (304) 291-4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control. The planned works of improvement include a grassed waterway 1,975 feet long, a concrete drop structure, 400 feet of drainage pipe, and sediment clean out.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local offiicals.)

March 14, 1989.

Rollin N. Swank,

State Conservationist.

[FR Doc. 89-6665 Filed 3-21-89; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:00 p.m. on Friday, April 7, 1989, at the Ramada Inn (Civic Center), 901 21st Street, Birmingham, Alabama 35203. The purpose of the meeting is to discuss the status of the Commission and the recent Regional SAC Chairs Conference in which the Alabama Committee was represented; and to discuss a project on minorities and women in state government.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rodney Max, (205/328-5760) or Bobby Doctor, CCR staff at (202/523-5571). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Mr. Doctor at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-6671 Filed 3-21-89; 8:45 am]

BILLING CODE 6335-01-M

Colorado Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Colorado Advisory Committee to the Commission will convene a meeting at 1:30 p.m. and adjourn at 3:30 p.m. on April 4, 1989, at the Executive Tower Inn, 1405 Cutris Street, Denver, Colorado 80202. The purpose of the meeting is to discuss on-going projects and to plan future activities for the Committee.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Maxine Kurtz or Philip Montez, Director of the Western Regional Division (213) 894-3437 or (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 10, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-6674 Filed 3-21-89; 8:45 am]

BILLING CODE 6335-01-M

Connecticut Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 4:30 p.m. on Thursday, March 30, 1989, in Room 207, Social Work Building, University of Connecticut 1800 Asylum Avenue, Hartford, Connecticut. A business session will begin the meeting at 10:30 a.m., during which a November 1988 Regional Conference of Advisory Committee Chairpersons will be discussed. After the luncheon recess, a forum on "Access to Health and Mental Health Services for Southeast Asian Refugees and Immigrants" will begin at 1:00 p.m. in the same location.

Persons desiring additional information on this matter should contact Committee Chairperson James H. Stewart (203/468-3417) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Mr. Binkley at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 13, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-6675 Filed 3-21-89; 8:45 am]

BILLING CODE 6335-01-M

Hawaii Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 noon, on April 11, 1989 at the Waikiki Trade Center, 2255 Kuhio Avenue, 11th Floor conference room, Honolulu, Hawaii, 96815. The purpose of the meeeting is to plan for completion of the Hawaiian Homelands project, consider new projects and review current civil rights developments in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Andre S. Tatibouet, or Philip Montez, Director of the Western Regional Division (213) 894-3437, TDD (213) 894-0508. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated Washington, DC, March 9, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-6672 Filed 3-21-89; 8:45 am]

BILLING CODE 6335-01-M

Maine Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 8:00 p.m. on Thursday, March 30, 1989, at Coastline Inn, 390 Western Ave., Augusta, ME 04330. The purpose of the meeting is 1) to plan a press release of the report "Civil Rights Issues in Maine," and 2) decide on a forum topic and make necessary preparations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Grayce E. Studley, (202/874-8135) or John I. Binkley, Director of the Eastern Regional Division of the Commission at (202/523-5264 or TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 7, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-6673 Filed 3-21-89; 8:45 am]

BILLING CODE 6335-01-M

Mississippi Advisory Comittee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights (CCR), that a meeting of the Mississippi Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 6:00 p.m. on April 12, 1989, at the Howard Johnson Inn, North Frontage Rd., Meridian, MS 39201. The purpose of the meeting is to receive a briefing from community leaders on civil rights progress and/or problems in the State and to make future plans for a program project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Leslie Range (601/352-0161) or Bobby Doctor, CCR staff at (202/523-5571). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Mr. Doctor at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 13, 1989.

Melvin L. Jenkins,

Acting Satff Director.

[FR Doc. 89-6675 Filed 3-21-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Nos. 8113-01, 8113-02]

Actions Affecting Export Privileges: Helmut Keck, Individually and Doing Business as OTC Mess-Und Videoteknik, GmbH

Summary

In the matter of Helmut Keck, individually and doing business as OTC Mess-Und Videoteknik, GmbH; Respondents.

Pursuant to the February 14, 1989 recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Helmut Keck, individually and doing business as OTC Mess Und Videoteknik GmbH (herein and after Respondents), both with an address of Bebelallee 64b, 2000 Hamburg 60, Federal Republic of Germany, is, and the Respondents are collectively, denied for a period of ten years from the date hereof, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (14 CFR, Parts 768-799).

Order

On February 14, 1989, the ALJ entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts in this case, subject to the technical modification below, I hereby affirm the Decision and Order of the ALJ. The modification of the ALJ's Decision and Order is as follows: On page 10, there is added at the end of paragraph II the following new sentence:

Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

This constitutes final agency action in this matter.

Date: March 16, 1989.

Paul Freedenberg,

Under Secretary for Export Administration.

Decision and Order

In the Matter of: Helmut Keck individually and doing business as OTC Mess-Und Videoteknik GmbH; Respondent.

Appearance for Respondent: Helmut J. Keck, Bebelallee 64 b, 200 Hamburg 60, F.R.G.

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Ave., NW., Washington, DC 20230.

Preliminary Statement

On May 16, 1988, the Office of Export Enforcement, United States Department of Commerce ("Agency"), issued a charging letter to Respondent Helmut Keck, individually and doing business as OTC Mess-Und Videoteknik GmbH (hereinafter "Keck"). The charging letter asserts that Respondent violated the Export Administration Act of 1979 ("the Act") and §§ 387.3, 387.4, 387.5 and 387.6 of the Export Administration Regulations ("the Regulations").[1]

Respondent filed an answer to the charging letter which was received in this office on October 12, 1988. Pursuant to § 788.14 of the Regulations, this matter is adjudicated on the record without a hearing. Both Agency Counsel and Respondent made written submissions to the record, which closed for decision on December 30, 1988.

Background

This is but one of a half dozen or so separate cases in which the Agency asserts there was a scheme to divert U.S. technology to the U.S.S.R. It is represented that a conspiracy existed among various individuals and was directed by one Goran Josberg, individually and doing business as Globe Metals, Globe Trade, and Globe Computers. Josberg is represented to have been a denied person since 1983.[2] It is asserted that his *modus operandi* has been to use other willing partners such as Keck, and Anton Elzer [3] to obtain goods for Josberg's Soviet customers and to engage in cover-up schemes to hide the transactions.

Facts

The evidence reflects that Respondent Keck participated in a conspiracy with Elzer, individually and doing business as Development and Consultant Elzer ECO AB, and Josberg to order a U.S.-origin WAS 3000 airstream modulator (WAS 3000), and attempted to conceal, by a paper diversion through Singapore, transshipment of this equipment through Finland for ultimate reexport to the U.S.S.R. The crux of the conspiracy was that working together, they obtained a U.S.-origin high intensity WAS 3000 system based on the representation that Respondent Keck was the end user and that West Germany was the ultimate country of destination, when in fact the goods were acquired for ultimate shipment to the Soviet Union.

Elzer made inquiries of U.S. manufacturers regarding the ordering of the equipment for Josberg in 1984 (Agency Exh. 2). After declining to complete the ITA–629P form, providing information about the ultimate end user, as required by the Regulations and requested by the U.S. manufacturer, Elzer and Josberg did not order the equipment (Agency Exh. 2).

Elzer then requested Keck to obtain the WAS-3000. Respondent Keck thereafter worked with Elzer and his company to order and make arrangements for the export and reexport to Finland. Respondent Keck supplied the U.S. exporter with West German Import certificate number 728167, dated May 24, 1984, and applied for an export license, which was thereafter granted, with Keck identified as the end user in West Germany.

The equipment was shipped from the United States to West Germany on or about October 12, 1984. The day after it was received, Respondent delivered the equipment to Elzer who, in furtherance of the conspiracy and arrangements previously made, caused the WAS–3000 to be forwarded from Hamburg, West Germany to Nurminen Oy, a freight forwarder in Helsinki, Finland. Upon arrival in Helsinki, the equipment was transshipped to Moscow.

Elzer, in a written statement to the Agency, asserted that the WAS–3000 was acquired from Keck and delivered to Josberg:

> [Mr] Keck offered me the goods without any restrictions. We have no such [export control] regulations herein that [West] Germany he explained. Thus, I ordered in the name of Allison, who had got an order from Josberg, one WAS–3000. *Mr. Keck* made all the arrangements with the U.S. exporter alone and when the goods arrived in Hamburg, Mr. Josberg ordered me to send the equipment to messrs., Nurminen in Finland. *I instructed Mr. Keck about this and he made all necessary arrangements . . . to Finland.*

(Agency Exh. 2) (emphasis added).

It is clear that reexport authority to the Soviet Union for the WAS–3000 would have been denied if requested.

Discussion

A former employee of Josberg, Lennert Appelberg, told the Department of Commerce Export control attache, at meetings on April 24, 1985 and about May 3, 1985, that he was a "front" man for Josberg. According to Appelberg, Josberg often traveled to the U.S.S.R. and negotiated with the Soviets for delivery of desired U.S. technology. Appelberg's duties were to acquire the U.S. technology for Josberg and Globe Metals for diversion to the East Bloc. Appelberg stated that Josberg bragged openly about the fact that he was able to divert large quantities of U.S. technology through Sweden and other countries since 1982 or 1983, even though he was on the table of denied parties.

Another employee of Josberg, Rolf Carrick, provided specific example of how Josberg operated. According to Carrick, Appelberg bought a computer for Josberg, for ultimate sale to Josberg's Soviet customer. Josberg then paid a Swedish lawyer a fee to answer inquiries on the end use of the computer, to the effect that he intended to use it for word-processing, when the lawyer had no intention to buy the computer at all. Thus, while Josberg directed which goods to buy for his Soviet customers, he remained behind the scene, the evidence shows that Elzer knowingly played the same kind of role as Appelberg and the lawyer in Sweden, by obtaining the WAS–3000 for Josberg's Soviet cutsomer, while Josberg directed the operation from the shadows.[4]

The record here reflects that Keck represented himself to be the ultimate end user when he had already arranged for disposition of the WAS–3000 equipment to Elzer and his company, Allison Ltd., of Singapore. He also represented the WAS–3000 would remain in West Germany. Keck, Elzer and others knew of, and made the arrangements for, the shipment of the WAS–3000 from West Germany to Finland the day following its delivery in West Germany.

Respondent Keck's tardily filed explanation does not contradict the essential facts as related above, although he would place a different emphasis reducing the extent of his advertent participation. It is acknowledged that he was used. However, I conclude that he was not as innocent as he now claims. He was

---

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120, (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368–399, *were* redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

[2] This Denial Order was published in 49 FR 499 (January 4, 1984). The proceeding involving Mr. Josberg is currently awaiting Secretarial action.

[3] *Elzer, et al.*, Docket Nos. 7108–01, 7108–02, Decision, June 23, 1988 (53 FR 26676, July 29, 1988).

[4] The facts and discussion relating to this "second transaction" are from the proceeding regarding Anton Elzer, cited above. They deal with this transaction also and those remarks are adopted here.

aware of the illegal diversion scheme before the goods were transshipped to the Soviet Union. He could have blown the whistle then, but he didn't.

It is represented by Keck that he did not know Josberg and did not know that the WAS–3000 was to be shipped to the Soviet Union. These elements need not be proved in order to find the Respondent liable for the violations. Keck did not have to know all of the members of the conspiracy, nor did he have to know that the ultimate destinations of the U.S. origin equipment was the Soviet Union. His knowledge that the equipment was going to be exported, in violation of the regulations, and his actions in furtherance of this, in particular, his false and misleading representations to the U.S. export officials, makes him an active and liable co-conspirator. The actions of his co-conspirators, Elzer and Josberg, in reexporting the equipment to the Soviet Union, are thereby attributable to him.

The sum total of the evidence, and the inferences drawn, clearly demonstrate an illegal conspiracy in which this Respondent and others played active roles.

Conclusion

Based on the evidence in this record I find that Keck conspired with others to acquire a U.S.-origin WAS–3000 airstream modulator on a false representation that West Germany was the country of ultimate destination. He and others, in fulfillment of the conspiracy and previous arrangements, then reexported the equipment through Finland to the Union of Soviet Socialist Republics (USSR) without the required reexport authorizations from the U.S. Department of Commerce.

Each and all of the facts set forth and charging letter of May 16, 1988 have been established and found as have the violations of the regulations alleged. Based upon such findings, I conclude that an Order denying Respondents U.S. export privileges for a period of ten years from the date a final Order becomes effective should be entered in this proceeding.[5]

Order

I. For a period of 10 years from the date of the final Agency action, respondent Helmut Keck, individually and doing business as OTC Mess-Und Videoteknik GmbH, Bebelallee 64 b, 2000 Hamburg 60, Federal Republic of Germany, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capcity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill be lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Hugh J. Dolan,

Administrative Law Judge.

Date: February 14, 1989.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89–6773 Filed 3–21–89; 8:45 am]

BILLING CODE 3510–DT–M

[5] I do not concur with Agency Counsel's request that the period of denial should be 20 years. I do not find that this Respondent's participation was as egregious as that of the other conspirators. His criminal conviction and fine have also been considered, both with respect to his culpability and the appropriate penalty.

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review of Final Determination Made by International Trade Administration, Import Administration Respecting Red Raspberries from Canada Filed by Clearbrook Packers, Inc., et al.

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section,

International Trade Administration, Department of Commerce.

ACTION: Notice of Request for Panel Review of Final Determination made by International Trade Administration, Import Administration respecting Red Raspberries from Canada filed by Clearbrook Packers, Inc., Marco Estates Ltd./Landgrow Packers, and Mukhtiar & Sons Packers, Ltd., on March 15, 1989.

SUMMARY: On March 15, 1989, a Request for Panel Review of the final determination made by International Trade Administration, Import Administration, respecting Red Raspberries from Canada was filed by Clearbrook Packers, Inc., Marco Estates Ltd./Landgrow Packers, and Mukhtiar & Sons Packers, Ltd., with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. These panels will be established when a Request for Panel Review is received to act in place of national courts to expeditiously review final determinations to determine whether they are consistent with the antidumping duty or countervailing duty law of the country that made the determination. Under Article 1904 of the United States-Canada Free-Trade Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada establishes *Rules of Procedure for Article 1904 Binational Panel Review* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on March 16, 1989, pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first request for Panel Review (the deadline for filing a Complaint in April 14, 1989);

(b) A Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is April 29, 1989); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Date: March 17, 1989

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89–6779 Filed 3–21–89; 8:45 am]

BILLING CODE 3510–DA–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review of Final Determination Made by International Trade Administration, Import Administration Respecting Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada Filed by Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. (Formerly Fortress Allatt, Ltd.)

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Request for Panel Review of Final Determination Made by International Trade Administration, Import Administration respecting Replacement Parts For Self-Propelled Bituminous Paving Equipment from Canada filed by Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. (formerly Fortress Allatt, Ltd.) on March 16, 1989.

SUMMARY: On March 16, 1989, a Request for Panel Review of the final determination made by International Trade Administration, Import Administration, respecting Replacement Parts For Self-Propelled Bituminous Paving Equipment from Canada was filed by Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. (formerly Fortress Allatt, Ltd.), with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. These panels will be established when a Request for panel Review is received to act in place of national courts to expenditiously review final determinations to determine whether they are consistent with the antidumpting duty or countervailing duty law of the country that made the determination.

Under Article 1904 of the United States-Canada Free-Trade Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on March 16, 1989, pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is April 15, 1989);

(b) A Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is April 30, 1989); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Date: March 17, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-6780 Filed 3-21-89; 8:45 am]

BILLING CODE 3510-DA-M

National Oceanic and Atmospheric Administration

Intent To Conduct a Public Meeting on the Sites Being Considered for Nomination as Components to the South Carolina National Estuarine Research Reserve

AGENCY: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that the South Carolina Coastal Council, of the State of South Carolina, intends to conduct a public meeting to discuss the proposed nomination of one of two sites as components in a South Carolina Estuarine Research Reserve System (SCNERRS). This public meeting is being held for the purpose of soliciting comments about the Ashepoo-Combahee-Edisto (ACE) River Basin which is under consideration by the South Carolina Coastal Council for nomination. The State of South Carolina's completed site nomination package will be submitted to the Marine and Estuarine Management Division, of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, which administers the National Estuarine Reserve Research System. Environmental impact statements and draft management plans will be prepared for those State nominated sites receiving NOAA approval.

The public meeting will be held at 7:00 p.m. on Monday, April 10, 1989 at the Walterboro Courthouse, One Washington Street, in Walterboro, South Carolina 29488.

Background

The State of South Carolina is identifying estuarine areas in an effort to establish a multi-site system for research and education which adequately represents the major estuarine characteristics of the South Carolina coastal zone. Sites ultimately designated as components of the SCNER will be used to study the South Carolina estuarine ecosystem, as well as by schools and the general public for learning about estuarine ecology and related issues. The two sites undergoing preliminary evaluation are: Ashepoo-Comhabee-Edisto (ACE) River Basin and North Inlet (Belle Baruch Institute). A public meeting will be held for the North Inlet site in the latter part of April or early May and information on time and place will be published at that time. Site selection criteria are based on ecological representativeness, value for research and education and practical management considerations.

All interested individuals are encouraged to attend the public meeting. Invited speakers include representatives of the South Carolina Coastal Council, SCNERR Site Selection Advisory Committee, and NOAA. Speakers will describe the importance of the proposed reserve program to local, regional and/or statewide environment issues, and the opportunities for local involvement in reserve operations and management. Public comments on the reserve concept are invited.

An information packet on the proposed South Carolina National Estuarine Research Reserve will be available at the public meeting. Speakers are asked to provide a written copy of their statement at the meeting. It is recommended that members of the public limit their presentations to 3–5 minutes in length.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Dated: March 16, 1989.

[FR Doc. 89-6768 Filed 3-21-89; 8:45 am]

BILLING CODE 3510-08-M

North Pacific Fishery Management Council; Change of Meeting Date

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

ACTION: Notice of a change of a scoping meeting date.

SUMMARY: A notice of intent to prepare a supplemental environmental impact statement and notice of scoping was published February 23, 1989 (54 FR 7814), containing a schedule of planned meetings. The North Pacific Fishery Management Council (Council) has changed the date of one of the meetings. The Council's Fishery Planning Committee will continue its work on sablefish controlled-access alternatives, discuss similar alternatives for halibut and all other groundfish and crabs, develop recommendations concerning a definition of a "pipeline" for eligibility under a cut-off date, and other relevant issues.

DATES: The meeting planned for March 20–21, 1989, is rescheduled for March 28–29, 1989, and will begin at 1:00 p.m. on March 28.

ADDRESS: The meeting will be held at the Northwest and Alaska Fisheries Center, Room 2079, Building 4, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Dick Tremaine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; 907-271-2809.

Dated: March 15, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-6753 Filed 3-21-89; 8:45 am]

BILLING CODE 3510-22-M

Permits; Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public hearing.

SUMMARY: The National Marine Fisheries Service (NOA Fisheries) will hold a public hearing to solicit input on the proposed taking of bottlenose dolphins in the Gulf of Mexico. The Ouwehands Zoo in Rhenen, the Netherlands, applied for a public display permit, under the Marine Mammal Protection Act Amendments of 1988 and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), to capture and maintain four Atlantic Bottlenose dolphins (*Tursiops truncatus*). NOAA Fisheries has received comments on the application expressing concerns regarding population status of *Tursiops*, quotas for the collection of *Tursiops* under scientific research/public display permits, the removal of *Tursiops* as a result of other human activities, effects of brevetoxin poisoning on the Gulf of Mexico stocks of *Tursiops*, and a determination of the Optimum Sustainable Population (OSP).

DATES: Persons wishing to testify at this hearing must notify the Information Contact listed below by April 11, 1989. The hearing will be held on Tuesday, April 8, 1989, at 10:00 a.m..

ADDRESS: 5230, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ann D. Terbush, Chief, Permit Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910 (301–427–2289).

SUPPLEMENTARY INFORMATION: The public display of marine mammals as well as research activities that involve the taking of these species are controlled by a permit system that requires consultation with NOAA Fisheries scientists, managers, and the Marine Mammal Commission. The bottlenose dolphin is a popular animal to acquire for public display, and NOA Fisheries has established special management and research programs to ensure that it is not adversely affected by too many takings. A take is authorized only from areas along the Atlantic and Gulf coasts where populations have been assessed and when there are sufficient numbers to allow a quota. Current annual quotas are: Mississippi Sound—35; Indian/Banana River Complex (Florida)—6; Texas Coast-Corpus Christi/Matagorda Bay—17; West Coast of Florida (between Crystal River and Charlotte Harbor, including Tampa Bay)—23; and Florida Panhandle (between Crystal River west to Mobile Bay, Alabama)—10. The number of bottlenose dolphins removed during any calendar year cannot exceed two percent of the minimum population in a specific location. NOAA Fisheries is currently reviewing *Tursiops* population information and current quotas. This review will include an assessment of the environmental consequences of *Tursiops* removal under its quota system. This hearing is being held to give interested members of the public and other government agencies an opportunity to comment on this application and issues raised relative to the removal from the wild of bottlenose dolphins for public display purposes. NOAA Fisheries requests comments on the following four options for handling permits involving *Tursiops* pending conclusion of the review on the quota system: (1) Issue or deny Ouwehands and continue to process all other *Tursiops* applications for removal from the wild (applications under review and future applications); (2) continue to process *Tursiops* applications under review but suspend consideration of future applications; (3) suspend consideration of *Tursiops* applications under review and future applications but continue collections under existing permits; and (4) suspend all *Tursiops* applications and suspend removal from the wild under existing permits.

Date: March 15, 1989.

Nancy Foster,

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

[FR Doc. 89–6789 Filed 3–21–89; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION ON AGRICULTURAL WORKERS

Meeting

This notice announces the first formal meeting of the Commission.

Time: 9:00 a.m.–4:00 p.m., April 4, 1989.

Place: U.S. Department of Agriculture, Economic Research Service, Lower Level Auditorium, 1301 New York Avenue NW., Washington, DC.

Status: Open meeting except portions may be closed to discuss matters exempted from public disclosure pursuant to subsection (c) of section 552b of title 5, United States Code. The meeting is being held in a secure building; members of the public who plan to attend must call to be placed on the admittance list (Dennis Condie, (202) 472–9058).

Contact: Dennis Condie, Telephone (202) 472–9058.

Date: March 17, 1989.

Henry J. Voss,

Chairman, Commission on Agricultural Workers.

[FR Doc. 89–6781 Filed 3–21–89; 8:45 am]

BILLING CODE 6820–62–M

COMMISSION FOR THE IMPROVEMENT OF THE FEDERAL CROP INSURANCE PROGRAM

Under the Federal Crop Insurance Commission Act of 1988 (7 U.S.C. 1508 note), the Commission for the Improvement of the Federal Crop Insurance Program previously announced its intention to hold public hearings to receive testimony from farmers, insurers, lenders, and other interested persons on recommendations for the improvement of the Federal crop insurance program. See 54 FR 9246 (March 6, 1989).

The time and hearing sites for the public hearings the Commission has scheduled—but not previously announced in the **Federal Register**—are as follows:

March 21, 1989—10:00 a.m.–5:00 p.m.

Harrisburg, Pennsylvania

Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania 17101, (717) 234–5021

Baton Rouge, Louisiana

Louisiana State University, LSU Agriculture Center, Room 214, Baton Rouge, Louisiana 70895, (504) 388–4141

April 11, 1989—10:00 a.m.–5:00 p.m.

Fresno, California

Picadilly Inn-University, 4961 North Cedar Avenue, Waldorf Rooms 5 and 6, Fresno, California 93710, (209) 224–4200

Fargo, North Dakota

Fargo Holiday Inn, I–29 and 13th Avenue, South, 3803 13th Avenue, South, Fargo, North Dakota 58108, (701) 282–2700

April 13, 1989—10:00 a.m.–5:00 p.m.

Spokane, Washington,

Eastern Washington University, 705 W. First Avenue, 4th Floor Meeting Room, Mall Area, Spokane, Washington 99204, (509) 458–6401

April 18, 1989—10:00 a.m.–5:00 p.m.

Great Falls, Montana

Sheraton Inn Great Falls, 400 10th Avenue, South, Aronson-Mansfield Rooms, Great Falls, Montana 59405, (406) 727–7200

The Commission was established by Congress to ensure a thorough review of the Federal crop insurance program and the development of recommendations for such changes as are needed to improve the program so as to lessen, if not eliminate, the need for additional disaster payment programs while providing to producers of agricultural commodities more equitable, efficient, and predictable protection from natural disasters.

Persons interested in testifying at a particular Commission hearing are requested to write or call the Commission. The address and telephone number of the Commission are as follows: Commission for the Improvement of the Federal Crop Insurance Program, 1255 23rd Street, NW., Suite 880, Washington, DC 20037. Telephone: (202) 887–6700.

Done at Washington, DC, this 17th day of March 1989.

Kellye A. Eversole,

Executive Director.

[FR Doc. 89–6909 Filed 3–21–89; 8:45 am]

BILLING CODE 3410–PM–M

Meeting

Under the Federal Crop Insurance Commission Act of 1988 (7 U.S.C. 1508 note), notice is hereby given of the following meeting of the Commission for the Improvement of the Federal Crop Insurance Program:

Date: March 28–29, 1989. See, also, "PURPOSE" section of this notice.

Time: 8:00 a.m.–Noon; 1:00 p.m.–5:30 p.m., March 28. 8:00 a.m.–Noon; 1:00 p.m.–5:30 p.m., March 29

Place: Embassy Suites Hotel, 1250 22nd Street, N.W., Washington, D.C. 20037, Telephone: (202) 857–3388

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below

Purpose: To continue discussions on the development of recommendations to improve the Federal crop insurance program. The Commission will be meeting in plenary session from 1:00 p.m. to 5:30 p.m. on March 28, 1989, and again in plenary session at the times stated above on March 29, 1989. The Commission's three committees will be meeting from 8:00 a.m. to noon on March 28, 1989.

At this meeting, the Commission will be drafting its interim report to the Secretary of Agriculture and the Congressional agriculture committees on immediate administrative improvements in the program that it believes should be made under existing law, aimed at improved the program in the 1990 crop insurance sales year.

The Commission announces that, if necessary to complete the drafting of the report, the Commission will also meet on March 30, 1989, from 8:00 a.m. to noon, and from 1:00 p.m. to 5:30 p.m.

Contact Person: Kellye A. Eversole, Executive Director, Commission for the Improvement of the Federal Crop Insurance Program, 1255 23rd Street, NW., Suite 880, Washington, DC 20037. Telephone: (202) 887–6700.

Done at Washington, DC, this 17th day of March 1989.

Kellye A. Eversole,

Executive Director.

[FR Doc. 89–6910 Filed 3–21–89; 8:45 am]

BILLING CODE 3410–PM–M

DEPARTMENT OF DEFENSE

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised rates.

SUMMARY: This notice provides the updated adjusted standardized amounts (ASAs), DRG relative weights, outlier thresholds, Pediatric-Modified Diagnosis-Related Groups (PM–DRGs), children's hospital differentials, and high-volume children's hospitals in accordance with the changes to the CHAMPUS DRG-based payment system which were published on December 16, 1988 (53 FR 50515).

EFFECTIVE DATE: These revised rates and weights are effective for inpatient hospital admissions occurring on or after April 1, 1989.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361–4005.

To obtain copies of this document, see the **"ADDRESS"** section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS fiscal intermediary.

SUPPLEMENTARY INFORMATION: The final rule published on December 16, 1988 (53 FR 50515) provided for inclusion of children's hospitals and neonatal services in the CHAMPUS DRG-based payment system. Neonatal services are to be reimbursed using the PM–DRGs which have been developed by the National Association of Children's Hospitals and Related Institutions (NACHRI). We have calculated weights and rates for neonatal services, and the existing weights and rates have been updated. This notice publishes the weights and rates and denotes the children's hospitals which have been determined to be high-volume hospitals. We refer the reader to the December 16 final rule for detailed explanations of the changes to the CHAMPUS DRG-based payment system and the implementing regulations in 32 CFR Part 199.

Since many hospitals are not familiar with the PM–DRGs, we are providing the following ground rules for hospitals in order to facilitate processing of their neonatal claims.

1. If a neonate (patient age 0–28 days at admission) is premature, the appropriate prematurity diagnosis code must be used as a principal or secondary diagnosis. (CHAMPUS requires hospitals to use ICD–9–CM diagnosis codes.)

2. In all instances where a prematurity diagnosis code is used, a fifth digit value of 1 through 9 must be used to specify birthweight as required for ICD–9–CM codes. A value of 0 will result in the claim being denied. If no fifth digit is used, the grouper will ignore that diagnosis code, possibly resulting in the claim being processed as a full-term neonate.

3. If a neonate is not premature, a prematurity diagnosis code must not be used. The grouper will automatically assign a birthweight of "< 2499 grams" and assign the appropriate PM–DRG. If the birthweight is less than 2500 grams, the birthweight must be provided in the "remarks" section of the UB–82.

4. If there is more than one birthweight code on the claim, the grouper will assign the claim to DRG 470, and it will be denied.

5. All claims for beneficiaries less than 29 days old upon admission will be assigned to a PM–DRG.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 17, 1989.

Editorial Note.—This table will not appear in the Code of Federal Regulations.

TABLE 1.—NATIONAL URBAN AND RURAL ADJUSTED STANDARDIZED AMOUNTS AND CHILDREN'S HOSPITAL DIFFERENTIALS, LABOR/NONLABOR, AND COST-SHARE PER DIEM

Effective for admissions occurring on or after April 1, 1989.

The following summary provides the adjusted standardized amounts and the children's hospital differentials. It also provides the cost-share per diem, although it has not changed since October 1, 1988.

National Large Urban Adjusted:	
Standardized Amounts	$2,812.27
Labor portion	2,076.58
Nonlabor portion	735.59
National Other Urban Adjusted:	
Standardized Amounts	2,792.77
Labor portion	2,062.18
Nonlabor portion	730.59
National Rural Adjusted Standardized:	
Amount	2,584.68
Labor portion	2,024.06
Nonlabor portion	560.62
Children's Hospital Differential:	
Large Urban	2,039.74
Labor portion	1,506.14
Nonlabor portion	533.60
Other Urban	862.83
Labor portion	637.11
Nonlabor portion	225.72
Rural	
Labor portion	
Nonlabor portion	
Cost-Share per diem for beneficiaries other than dependents of active-duty members	210.00

Editorial Note.—This table will not appear in the Code of Federal Regulations.

TABLE 2.—CHAMPUS WEIGHTS AND THRESHOLD SUMMARY

Effective for admissions occurring on or after April 1, 1989.
The following summary shows the final CHAMPUS DRG weights as well as the geometric mean lengths of stay and outlier thresholds (for general hospitals and for children's hospitals) for all CHAMPUS DRGs including the PM-DRGs.

DRG Description	Weight	Arithmetic ALOS	Geometric ALOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
1 Craniotomy age>17 except for trauma	3.8680	14.2	11.1	1	35	28
2 Craniotomy for trauma age >17	5.1706	14.9	9.0	1	32	25
3 Craniotomy age 0-17	2.6141	10.2	6.5	1	30	23
4 Spinal Procedures	2.3460	10.9	8.4	1	32	25
5 Extracranial vascular procedures	1.6554	6.3	5.3	1	29	16
6 Carpal Tunnel release	0.5344	1.9	1.6	1	8	4
7 Periph & Cranial nerve & other nerv syst proc w CC	2.7935	15.3	9.0	1	33	26
8 Periph & Cranial nerve & other nerv syst proc w/o CC	0.8972	3.7	2.5	1	26	12
9 Spinal disorders & injuries	2.6613	16.6	9.2	1	33	26
10 Nervous System Neoplasms w CC	1.4119	8.7	6.0	1	29	22
11 Nervous system neoplasms w/o CC	0.8827	5.7	3.9	1	27	20
12 Degenerative nervous sytem disorders	1.6923	12.1	6.5	1	30	23
13 Multiple Sclerosis & Cerebellar Ataxia	1.1672	9.3	6.5	1	30	23
14 Specific cerebrovascular disorders except TIA	1.5371	8.4	5.6	1	29	22
15 Transient ischemic attack & precerebral occlusions	0.7133	3.8	3.0	1	22	11
16 Nonspecific cerebrovascular disorders w CC	1.6143	6.9	5.1	1	29	22
17 Nonspecific cerebrovascular disorders w/o CC	0.9973	6.0	3.4	1	27	20
18 Cranial & peripheral nerve disorders w CC	0.9819	6.8	5.0	1	29	22
19 Cranial & Peripheral nerve disorders w/o CC	0.6590	4.8	3.4	1	27	16
20 Nervous system infection except viral meningitis	1.7618	10.1	7.5	1	31	24
21 Viral meningitis	0.5758	3.7	3.3	1	16	9
22 Hypertensive encephalopathy	0.7162	4.6	3.7	1	27	13
23 Nontraumatic stupor & coma	0.9303	5.3	3.2	1	27	20
24 Seizure & headache age >17 w CC	0.9092	5.0	3.7	1	27	16
25 Seizure & headache age >17 w/o CC	0.5755	3.9	2.9	1	26	12
26 Seizure & headache age 0-17	0.4968	3.2	2.4	1	19	9
27 Traumatic stupor & coma, coma >1 hr	3.2482	10.4	5.5	1	29	22
28 Traumatic stupor & coma, coma <1 hr age >17 w CC	2.6526	9.6	5.2	1	29	22
29 Traumatic stupor & coma, coma <1 hr age >17 w/o CC	0.7815	4.3	2.8	1	26	15
30 Traumatic stupor & coma, coma <1 hr age 0-17	0.4946	2.7	1.8	1	18	7
31 Concussion age >17 w CC	0.7047	3.5	2.9	1	20	10
32 Concussion age >17 w/o CC	0.4156	2.3	1.8	1	12	6
33 Concussion age 0-17	0.2842	1.5	1.3	1	5	3
34 Other disorders of nervous system w CC	1.4517	7.5	4.5	1	28	21
35 Other disorders of nervous system w/o CC	0.7862	5.3	3.0	1	26	19
36 Retinal procedures	0.7810	2.8	2.4	1	13	7
37 Orbital procedures	0.6774	2.5	2.0	1	14	7
38 Primary iris procedures	*0.3692	2.8	2.2	1	17	7
39 Lens procedures with or without vitrectomy	0.6457	1.9	1.6	1	7	4
40 Extraocular procedures except orbit age >17	0.5480	2.1	1.7	1	11	5
41 Extraocular procedures except orbit age 0-17	0.4372	1.5	1.3	1	5	3
42 Intraccular procedures except retina, iris & lens	0.8275	2.8	2.3	1	14	7
43 Hyphema	0.2388	3.6	3.1	1	19	10
44 Acute major eye infections	0.4985	4.2	3.6	1	20	10
45 Neurological eye disorders	0.6436	3.5	2.9	1	20	10
46 Other disorders of the eye age >17 w CC	0.5437	3.8	2.9	1	26	12
47 Other disorders of the eye age >17 w/o CC	0.4845	3.5	2.6	1	22	10
48 Other disorders of the eye age 0-17	0.3750	2.9	2.3	1	18	8
49 Major head & neck procedures	3.2871	12.4	9.0	1	32	25
50 Sialoadenectomy	0.6777	2.2	1.9	1	8	5
51 Salivary gland procedures except sialoadenectomy	0.6511	2.2	1.8	1	10	5
52 Cleft lip & palate repair	0.6942	2.8	2.4	1	13	7
53 Sinus & Mastoid procedures age >17	0.6479	2.1	1.6	1	10	5
54 Sinus & Mastoid procedures age 0-17	0.7603	2.7	1.8	1	19	8
55 Miscellaneous ear, nose & throat procedures	0.5088	1.5	1.3	1	5	3
56 Rhinoplasty	0.5103	1.5	1.3	1	5	3
57 T&A proc, except tonsillectomy &/or adenoidectomy only, age >17	0.6020	2.1	1.8	1	10	5
58 T&A proc, except tonsillectomy &/or adenoidectomy only, age 0-17	0.3572	1.2	1.1	1	2	1
59 Tonsillectomy &/or adenoidectomy only, age >17	0.3529	1.2	1.1	1	2	2

DRG Description	Weight	Arithmetic ALOS	Geometric ALOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
60 Tonsillectomy &/or adenoidectomy only, age 0–17	0.3239	1.2	1.1	1	2	1
61 Myringotomy w tube insertion age >17	0.5708	1.6	1.3	1	6	3
62 Myringotomy w tube insertion age 0–17	0.4749	2.1	1.6	1	12	6
63 Other ear, nose & throat o.r. procedures	1.1150	3.6	2.6	1	24	10
64 Ear, nose & throat malignancy	1.0488	5.8	3.5	1	27	20
65 Dysequilibrium	0.4729	3.1	2.6	1	15	8
66 Epistaxis	0.5127	3.6	3.1	1	18	9
67 Epiglottitis	1.0806	4.3	3.2	1	27	14
68 Otitis media & uri age >17 w CC	0.6661	4.1	3.4	1	20	10
69 Otitis media & uri age > w/o CC	0.5061	3.5	2.8	1	18	9
70 Otitis media & uri age 0–17	0.3967	3.0	2.6	1	14	7
71 Laryngotracheitis	0.3593	2.4	2.1	1	11	6
72 Nasal trauma & deformity	0.4225	1.7	1.4	1	7	4
73 Other ear, nose & throat diagnoses age >17	0.6542	3.7	2.7	1	26	12
74 Other ear, nose & throat diagnoses age 0–17	0.5250	3.1	2.1	1	22	9
75 Major chest procedures	3.1259	11.1	9.5	1	33	26
76 Other resp system o.r. procedures w CC	2.3381	10.4	7.6	1	31	24
77 Other resp system o.r. procedures w/o CC	1.2453	5.4	3.6	1	27	20
78 Pulmonary embolism	1.3924	8.5	7.5	1	31	22
79 Respiratory infections & inflammations age >17 w CC	2.9450	12.0	9.4	1	33	26
80 Respiratory infections & inflammations age > w/o CC	1.4536	8.3	6.8	1	30	23
81 Respiratory infections & inflammations age 0–17	1.7513	8.8	6.5	1	30	23
82 Respiratory neoplasms	1.4722	8.2	5.6	1	29	22
83 Major chest trauma w CC	1.4937	8.1	6.8	1	30	22
84 Major chest trauma w/o CC	0.7767	4.3	3.4	1	27	14
85 Pleural effusion w CC	1.2614	7.6	6.0	1	30	23
86 Pleural effusion w/o CC	0.7373	4.8	3.7	1	27	16
87 Pulmonary edema & respiratory failure	2.2275	7.7	5.5	1	29	22
88 Chronic obstructive pulmonary disease	1.3248	6.9	5.5	1	29	20
89 Simple pneumonia & pleurisy age >17 w CC	1.5411	7.6	6.3	1	30	21
90 Simple pneumonia & pleurisy age >17 w/o CC	0.9131	5.5	4.7	1	26	14
91 Simple pneumonia & pleurisy age 0–17	0.6337	4.1	3.5	1	18	10
92 Interstitial lung disease w CC	1.4260	6.3	4.9	1	28	20
93 Interstitial lung disease w/o CC	0.9140	5.1	3.4	1	27	18
94 Pneumothorax w CC	1.6511	7.4	5.7	1	29	22
95 Pneumothorax w/o CC	0.7111	5.4	4.3	1	28	16
96 Bronchitis & asthma age >17 w CC	1.1904	6.4	5.3	1	29	17
97 Bronchitis & asthma age > w/o CC	0.7505	4.5	3.8	1	22	11
98 Bronchitis & asthma age 0–17	0.5481	3.5	2.9	1	16	9
99 Respiratory signs & symptoms w CC	0.9481	4.5	3.6	1	27	13
100 Respiratory signs & symptoms w/o CC	0.5645	2.9	2.4	1	15	8
101 Other respiratory sytsem diagnoses w CC	1.8667	7.0	5.1	1	29	22
102 Other respiratory system diagnoses w/o CC	0.8661	4.2	2.9	1	26	15
103 Heart transplant	7.7155	16.8	13.9	2	37	30
104 Cardiac valve procedure w pump & w cardiac cath	5.8932	12.0	10.4	1	34	27
105 Cardiac valve procedure w pump & w/o cardiac cath	5.7453	11.9	11.0	3	35	23
106 Coronary bypass w cardiac cath	4.8650	10.0	9.2	2	29	19
107 Coronary bypass w/o cardiac cath	4.8056	10.2	8.6	1	32	25
108 Other cardiothoracic or vascular procedures, w pump	4.0213	10.6	8.1	1	32	25
109 Other cardiothoracic procedures w/o pump	3.8298	11.7	9.8	1	33	26
110 Major reconstructive vascular proc w/o pump w CC	2.6309	8.6	7.8	2	30	18
111 Major reconstructive vascular proc w/o pump w/o CC	2.1188	5.5	4.4	1	28	16
112 Vascular procedures except major reconstruction w/o pump	3.5615	19.1	15.8	2	39	32
113 Amputation for CIRC system disorders except upper limb & toe	2.0307	10.7	7.5	1	31	24
114 Upper limb & toe amputation for CIRC system disorders	6.1761	15.2	12.8	1	37	25
115 Perm cardiac pacemaker implant, w AMI, heart failure or shock	3.0297	6.5	5.1	1	29	18
116 Perm cardiac pacemaker implant w/o AMI, heart failure or shock	3.0658	6.7	5.5	1	29	19
117 Cardiac pacemaker revision except device replacement	2.5700	4.1	3.1	1	25	12
118 Cardiac pacemaker device replacement	0.7148	3.0	2.4	1	16	8
119 Vein ligation & stripping	3.1630	12.4	7.9	1	31	24
120 Other circulatory system O.R. procedures	2.2495	8.4	6.7	1	30	23
121 Circulatory disorders w AMI & C.V. comp disch alive	1.5427	6.1	4.9	1	28	20
122 Circulatory disorders w AMI & C.V. comp disch alive	2.5968	5.1	2.8	1	26	19
123 Circulatory disorders w AMI, expired	1.1323	4.5	3.3	1	27	15
124 Circulatory disorders except AMI, w card cath & complex diag	0.7286	2.5	1.9	1	13	6
125 Circulatory disorders except AMI, w card cath w/o complex diag	2.5725	13.5	9.6	1	33	26
126 Acute & subacute endocarditis	1.2878	6.7	5.3	1	29	20
127 Heart failure & shock	0.8752	7.9	7.0	1	30	18
128 Deep vein thrombophlebitis	2.5964	6.3	3.5	1	27	20
129 Cardiac arrest, unexplained	1.0492	6.6	4.8	1	27	21
130 Peripheral vascular disorders w CC	0.6566	4.5	3.2	1	27	16
131 Peripheral vascular disorders w/o CC	1.0843	3.4	2.7	1	20	9
132 Atherosclerosis w CC	0.9177	2.8	2.2	1	16	8
133 Atherosclerosis w/o CC	0.6417	4.0	3.2	1	24	12
134 Hypertension						

DRG Description	Weight	Arithmetic ALOS	Geometric ALOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
135 Cardiac congenital & valvular disorders age >17 w CC	1.0417	4.8	3.4	1	27	16
136 Cardiac congenital & valvular disorders age >17 w/o CC	0.7209	3.0	2.3	1	18	8
137 Cardiac congenital & valvular disorders age 0–17	1.0084	3.8	2.3	1	26	12
138 Cardiac arrhythmia & conduction disorders w CC	1.0464	4.8	3.5	1	27	15
139 Cardiac arrhythmia & conduction disorders w/o CC	0.6378	3.2	2.5	1	19	9
140 Angina pectoris	0.8078	3.4	2.8	1	19	9
141 Syncope & collapse w CC	0.6963	3.9	3.1	1	22	11
142 Syncope & collapse w/o CC	0.5464	3.6	2.5	1	19	9
143 Chest pain	0.6442	2.8	2.3	1	14	7
144 Other circulatory system diagnoses w CC	1.5260	6.7	4.8	1	28	21
145 Other circulatory system diagnoses w/o CC	0.8205	4.0	3.0	1	26	12
146 Rectal resection w CC	2.8598	13.3	12.1	3	36	29
147 Rectal resection w/o CC	2.1020	9.4	8.6	2	32	20
148 Major small & large bowel procedures w CC	3.2827	13.3	11.6	2	35	28
149 Major small & large bowel procedures w/o CC	2.0519	9.9	8.9	2	32	21
150 Peritoneal adhesiolysis w CC	2.3217	10.9	9.1	1	33	26
151 Peritoneal adhesiolysis w/o CC	1.4423	7.9	6.7	1	30	20
152 Minor small & large bowel procedure w CC	1.6061	7.5	6.0	1	29	22
153 Minor small & large bowel procedure w/o CC	1.0612	6.4	5.2	1	29	19
154 Stomach, esophageal & duodenal procedures age >17 w CC	3.7538	12.7	10.5	1	34	27
155 Stomach, esophageal & duodenal procedures age >17 w/o CC	1.9354	8.9	8.0	1	31	19
156 Stomach, esophageal & duodenal procedures age 0–17	1.1963	6.6	4.6	1	28	21
157 Anal & Stomal procedures w CC	1.0326	5.4	4.1	1	28	17
158 Anal & Stomal procedures w/o CC	0.5845	3.2	2.6	1	18	9
159 Hernia procedures except inguinal & femoral age >17 w CC	1.5222	6.8	5.2	1	29	21
160 Hernia procedures except inguinal & femoral age >17 w/o CC	0.7833	3.8	3.1	1	21	10
161 Inguinal & femoral hernia procedures age >17 w CC	0.7136	3.4	2.8	1	19	9
162 Inguinal & femoral hernia procedures age >17 w/o CC	0.5474	2.3	1.9	1	10	5
163 Hernia procedures age 0–17	0.4580	1.7	1.4	1	7	4
164 Appendectomy w complicated principal diag w CC	2.3194	10.2	9.2	2	33	22
165 Appendectomy w complicated principal diag w/o CC	1.3685	6.8	6.1	1	26	15
166 Appendectomy w/o complicated principal diag w CC	1.3333	5.7	4.9	1	25	14
167 Appendectomy w/o complicated principal diag w/o CC	0.6977	3.4	3.1	1	11	7
168 Mouth procedures w CC	1.1951	4.7	3.0	1	26	16
169 Mouth procedures w/o CC	0.6298	2.3	1.8	1	13	6
170 Other digestive system O.R. procedures w CC	2.6859	11.2	7.8	1	31	24
171 Other digestive system O.R. procedures w/o CC	1.3709	6.8	5.0	1	29	22
172 Digestive malignancy w CC	1.6198	9.2	6.5	1	30	23
173 Digestive malignancy w/o CC	0.8888	6.8	4.3	1	28	21
174 G.I. hemorrhage w CC	1.1305	5.4	4.3	1	28	15
175 G.I. hemmorage w/o CC	0.7217	4.0	3.3	1	21	11
176 Complicated peptic ulcer	0.9612	5.9	5.0	1	27	14
177 Uncomplicated peptic ulcer w CC	0.9427	5.7	4.6	1	28	16
178 Uncomplicated peptic ulcer w/o CC	0.6445	4.1	3.4	1	20	11
179 Inflammatory bowel disease	0.9499	6.8	5.4	1	29	20
180 G.I. obstruction w CC	0.9836	6.4	5.0	1	29	19
181 G.I. obstruction w/o CC	0.5532	32	3.2	1	21	11
182 Esophagitis, gastroent & misc digest disorders age >17 w CC	0.7227	4.6	3.6	1	27	13
183 Esophagitis, gastroent & misc digest disorders age >17 w/o CC	0.5532	3.6	2.9	1	21	10
184 Esophagitis, gastroent & misc digest disorders age 0–17	0.3536	2.9	2.4	1	15	8
185 Dental & oral dis except extractions & restorations, age >17	0.7245	4.0	2.8	1	26	13
186 Dental & oral dis except extractions & restorations, age 0–17	0.5837	3.8	2.7	1	26	12
187 Dental extractions & restorations	0.6901	2.4	2.1	1	11	6
188 Other digestive system diagnoses age >17 w CC	1.0126	5.6	4.2	1	28	18
189 Other digestive system diagnoses age >17 w/o CC	0.5448	3.5	2.6	1	25	11
190 Other digestive system diagnoses age 0–17	0.4257	2.6	1.8	1	15	7
191 Major pancreas, liver & shunt procedures	6.0154	21.4	17.3	2	41	34
192 Minor pancreas, liver & shunt procedures	3.3392	12.3	10.1	1	34	27
193 Biliary tract proc except to cholecystectomy w CC	3.5377	15.6	13.1	2	37	30
194 Biliary tract proc except tot cholecystectomy w/o CC	2.1503	10.1	8.7	1	32	25
195 Total cholecystectomy w C.D.E. w CC	1.8259	8.9	7.9	1	31	20
196 Total cholecystectomy w C.D.E. w/o CC	1.5088	7.3	6.8	2	21	14
197 Total cholecystectomy w C.D.E. w CC	1.4487	7.0	6.2	1	25	15
198 Total cholecystectomy w C.D.E. w/o CC	1.0351	5.3	5.0	1	15	10
199 Hepatobiliary diagnostic procedure for malignancy	3.03.0097	15.2	12.8	2	36	29
200 Hepatobiliary diagnostic procedure for non-malignancy	2.5546	9.1	6.8	1	30	23
201 Other hepatobiliary or pancreas O.R. procedures	2.2760	8.3	5.9	1	29	22
202 Cirrhosis & alcoholic hepatitis	1.6606	8.8	6.1	1	30	23
203 Malignancy or hepatobiliary system or pancreas	1.2380	7.6	4.9	1	28	21
204 Disorders of pacreas except malignancy	1.2419	7.1	5.4	1	29	22
205 Disorders of liver except malig,cirr,alc hepa w CC	1.7441	8.4	5.6	1	29	22
206 Disorders of liver except malig,cirr,alc hepa w/o CC	0.6063	4.3	2.9	1	26	15
207 Disorders of the biliary tract w CC	1.0217	5.4	4.0	1	27	17

DRG Description	Weight	Arithmetic ALOS	Geometric ALOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
208 Disorders of the biliary tract w/o CC	0.5550	3.3	2.6	1	20	9
209 Major joint & limb reattachment procedures	2.9108	10.5	9.8	3	28	19
210 Hip & femur procedures except major joint age > 17 w CC	2.6871	13.0	11.2	2	35	28
211 Hip & femur procedures except major joint age >17 w/o CC	1.8731	9.3	7.9	1	31	24
212 Hip & femur procedures except major joint age 0-17	1.5245	8.1	5.4	1	29	22
213 Amputation for musculoskeletal system & conn tissue disorders	2.3276	11.3	7.9	1	31	24
214 Back & neck procedures w CC	2.0354	10.3	8.6	1	32	25
215 Back & neck procedures w/o CC	1.3341	6.9	5.9	1	29	17
216 Biopsies of musculoskeletal system & connective tissue	2.0748	10.2	5.1	1	29	22
217 Wnd debrid & skin grft except hand, for muscskelet & conn tiss dis	2.5237	11.8	6.3	1	30	23
218 Lower extrem & humer proc except hip, foot, femur age >17 w CC	1.9437	9.1	7.0	1	31	24
219 Lower extrem & humer proc except hip, foot, femur age > 17 w/o CC	1.0507	4.7	3.9	1	25	13
220 Lower extrem & humer proc except hip, foot, femur age 0-17	0.8462	3.7	2.6	1	25	11
221 Knee procedures w CC	1.7070	7.0	4.8	1	28	21
222 Knee procedures w/o CC	0.8847	3.1	2.6	1	17	8
223 Major shoulder/elbow proc, or other upper extremity proc w	0.9495	3.7	2.8	1	23	11
224 Shoulder, elbow or forearm proc, ex major joint proc, w/o CC	0.7644	2.6	2.1	1	12	6
225 Foot procedures	0.7506	2.9	2.3	1	16	8
226 Soft tissue procedures w CC	1.3400	6.2	3.4	1	27	20
227 Soft tissue procedures w/o CC	0.7295	3.0	2.3	1	18	8
228 Major thumb or joint proc, or oth hand or wrist proc w CC	0.8432	2.9	2.2	1	18	8
229 Hand or wrist proc, except major joint proc, w/o CC	0.6374	2.1	1.7	1	10	5
230 Local excision & removal of int fix devices of hip & femur	0.6632	3.1	2.1	1	21	9
231 Local excision & removalof int fix devices except hip & femur	0.8644	3.7	2.3	1	26	12
232 Arthroscopy	0.7366	2.8	2.0	1	19	8
233 Other musculoskelet sys & conn tiss O.R. proc w CC	2.1340	10.3	7.5	1	31	24
234 Other musculoskelet sys & conn tiss O.R. proc w/o CC	1.0266	4.5	3.3	1	27	15
235 Fractures of Femur	1.2149	11.9	6.6	1	30	23
236 Fractures of hip & pelvis	1.1589	10.3	6.4	1	30	23
237 Sprains, strains, & dislocations of hip, pelvis & thigh	0.6137	4.1	2.9	1	26	14
238 Osteomyelitis	1.5287	11.3	8.7	1	32	25
239 Pathological fractures & musculoskeletal & conn tiss malignancy	1.3859	9.3	6.6	1	30	23
240 Connective tissue disorders w CC	1.6441	9.2	6.8	1	30	23
241 Connective tissue disorders w/o CC	0.7469	5.6	4.4	1	28	16
242 Septic arthritis	1.1450	8.1	6.6	1	30	22
243 Medical back problems	0.6402	5.0	3.6	1	27	17
244 Bone diseases & specific arthropathies w CC	1.0309	6.3	4.8	1	28	21
245 Bone diseases & specific arthropathies w/o CC	0.7201	4.7	3.3	1	27	16
246 Non-specific arthropathies	0.8778	6.1	4.0	1	27	17
247 Signs & symptoms of musculoskeletal system & conn tissue	0.5851	4.3	3.1	1	27	14
248 Tendonitis, myositis & Bursitis	0.5765	4.1	3.1	1	27	13
249 Aftercare, musculoskeletal system & connective tissue	0.5541	3.9	2.6	1	26	13
250 Fx, sprn, strn & disl of forearm, hand, foot age >17 w CC	0.9761	6.2	4.4	1	28	21
251 Fx, sprn, strn & disl of forearm, hand, foot age >17 w/o CC	0.5838	3.0	2.0	1	21	9
252 Fx, sprn, strn & disl of forearm, hand, foot age 0-17	0.3089	1.3	1.2	1	3	2
253 Fx, sprn, & disl of uparm, lowleg ex foot age >17 w CC	1.0726	6.8	4.5	1	28	21
254 Fx, sprn, strn & disl of uparm, lowleg ex foot age >17 w/o CC	0.4728	3.5	2.6	1	26	11
255 Fx, sprn, strn & disl of uparm, lowleg ex foot age 0-17	0.3868	2.8	1.9	1	17	8
256 Other musculoskeletal system & connective tissue diagnoses	0.6349	3.9	2.6	1	26	13
257 Total mastectomy for malignancy w CC	1.0819	5.1	4.6	1	20	11
258 Total mastectomy for malignancy w/o CC	0.9285	4.4	4.0	1	15	9
259 Subtotal mastectomy for malignancy w CC	1.1126	4.7	3.6	1	27	16
260 Subtotal mastectomy for malignancy w/o CC	0.7383	2.9	2.5	1	14	7
261 Breast proc for non-malignancy except biopsy & local excision	0.9127	2.7	2.3	1	13	7
262 Breast biopsy & local excision for non-malignancy	0.5016	2.1	1.7	1	10	5
263 Skin graft &/or debrid for skin ulcer or cellulitis w CC	3.0921	19.0	12.5	1	36	29
264 Skin graft &/or debrid for skin ulcer or cellulitis w/o CC	1.8223	13.1	9.3	1	33	26
265 Skin graft &/or debrid except for skin ulcer or cellulitis w CC	1.7872	7.5	5.6	1	29	22
266 Skin graft &/or debrid except for skin ulcer or cellulitis w/o C	0.8770	4.0	3.0	1	26	13
267 Perianal & pilonidal procedures	0.5044	2.6	2.1	1	14	7
268 Skin, subcutaneous tissue & breast plastic procedures	0.7054	2.8	2.0	1	17	7
269 Other skin, subcut tiss & breast proc w CC	1.6146	7.4	5.3	1	29	22
270 Other skin, subcut tiss & breast proc w/o CC	0.7637	3.4	2.3	1	26	11

DRG Description	Weight	Arithmetic ALOS	Geometric ALOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
271 Skin ulcers	1.8264	11.5	8.4	1	32	25
272 Major skin disorders w CC	1.1143	7.3	5.6	1	29	22
273 Major skin disorders w/o CC	0.7106	5.6	4.0	1	27	17
274 Malignant breast disorders w CC	1.6827	9.5	5.9	1	29	22
275 Malignant breast disorders w/o CC	0.8456	6.0	4.2	1	28	20
276 Non-maligant breast disorders	0.5955	3.5	2.7	1	23	11
277 Cellulitis age >17 w CC	1.1691	7.5	6.3	1	30	20
278 Cellulitis age >17 w/o CC	0.7154	5.1	4.3	1	25	13
279 Cellulitis age 0–17	0.5152	4.1	3.5	1	19	10
280 Trauma to the skin, subcut tiss & breast age >17 w CC	0.6894	4.1	2.6	1	26	15
281 Trauma to the skin, subcut tiss & breast age >w/o CC	0.4693	2.9	2.2	1	18	8
282 Trauma to the skin, subcut tiss & breast age 0–17	0.3402	1.8	1	1.5	7	4
283 Minor skin disorders w CC	1.1638	6.3	4.2	1	28	21
284 Minor skin disorders w/o CC	0.4764	3.6	2.7	1	25	11
285 Amputat of lower limb for endocrine, nutrit, & metabol disorders	4.3005	21.6	15.3	1	39	32
286 Adrenal & pituitary procedures	2.3449	8.6	7.9	2	27	17
287 Skin grafts & wound debrid for endoc, nutrit & metab disorders	2.3108	15.2	11.1	1	35	28
288 O.R. procedures for obesity	1.7899	6.0	5.6	1	16	11
289 Parathyroid procedures	1.1587	4.9	4.0	1	26	13
290 Thyroid procedures	0.7626	3.0	2.6	1	13	7
291 Thyroglossal procedures	0.4758	1.3	1.2	1	3	2
292 Other endocrine, nutrit & metab O.R. proc w CC	2.9824	11.8	9.0	1	32	25
293 Other endocrine, nutrit & metab O.R. proc w/o CC	1.2450	6.3	5.1	1	29	21
294 Diabetes age >35	0.7503	5.8	4.9	1	28	15
295 Diabetes age 0–35	0.7214	4.7	3.8	1	27	13
296 Nutritional & misc metabolic disorders age >17 w CC	1.1082	6.9	4.9	1	28	21
297 Nutritional & misc metabolic disorders age >17 w/o CC	0.7165	5.2	3.5	1	27	17
298 Nutritional & misc metabolic disorders age 0–17	0.6001	4.4	3.1	1	27	14
299 Inborn errors of metabolism	0.8176	5.3	3.9	1	27	18
300 Endocrine disorders w CC	0.9210	6.1	4.5	1	28	19
301 Endocrine disorders w/o CC	0.5550	3.8	2.5	1	26	11
302 Kidney transplant	6.0068	16.5	14.5	3	38	31
303 Kidney, ureter & major bladder procedures for neoplasm	2.5806	10.6	9.6	2	33	23
304 Kidney, ureter & major bladder proc for non-neopl w CC	2.3432	9.7	7.8	1	31	24
305 Kidney, ureter & major bladder proc for non-neopl w/o CC	1.4083	6.1	4.6	1	28	21
306 Prostatectomy w CC	1.3575	6.4	5.4	1	29	17
307 Prostatectomy w/o CC	0.8631	3.9	3.5	1	16	9
308 Minor bladder procedures w CC	1.8233	8.1	5.6	1	29	22
309 Minor bladder procedures w/o CC	1.1876	6.0	4.3	1	28	21
310 Transurethral procedures w CC	1.0011	4.2	3.1	1	27	12
311 Transurethral procedures w/o CC	0.7484	2.9	2.4	1	16	8
312 Urethral procedures, age >17 w CC	0.7797	3.4	2.8	1	20	10
313 Urethral procedures, age >17 w/o CC	0.5727	3.0	2.1	1	23	10
314 Urethral procedures, age 0–17	0.5510	2.9	2.2	1	21	9
315 Other kidney & urinary tract O.R. procedures	2.2506	9.1	6.5	1	30	23
316 Renal failure	2.1166	11.9	5.8	1	29	22
317 Admit for renal dialysis	*0.3494	2.8	2.0	1	18	18
318 Kidney & urinary tract neoplasms w CC	1.3760	7.4	5.0	1	29	22
319 Kidney & urinary tract neoplasms w/o CC	0.8223	4.8	3.3	1	27	16
320 Kidney & urinary tract infections age >17 w CC	1.0135	5.9	4.9	1	28	15
321 Kidney & urinary tract infections age >17 w/o CC	0.6603	4.4	3.8	1	20	11
322 Kidney & urinary tract infections age 0–17	0.5564	4.3	3.6	1	21	11
323 Urinary stones w CC, &/or ESW lithotripsy	0.8475	3.0	2.2	1	19	9
324 Urinary stones w/o CC	0.4649	2.2	1.8	1	11	5
325 Kidney & urinary tract signs & symptoms age >17 w CC	0.6587	4.2	3.4	1	27	13
326 Kidney & urinary tract signs & symptoms age >17 w/o CC	0.5563	3.3	2.7	1	18	9
327 Kidney & urinary tract signs & symptoms age 0–17	0.4378	2.6	2.0	1	15	7
328 Urethral stricture age >17 w CC	*0.6200	5.1	3.9	1	28	20
329 Urethral stricture age >17 w/o CC	0.9326	3.9	3.0	1	26	13
330 Urethral stricture age 0–17	*0.2788	0.0	1.6	1	9	9
331 Other kidney & urinary tract diagnoses age >17 w CC	1.1720	6.7	4.5	1	28	21
332 Other kidney & urinary tract diagnoses age >17 w/o CC	0.6545	3.9	2.8	1	26	13
333 Other kidney & urinary tract diagnoses age 0–17	0.5724	3.7	2.8	1	26	12
334 Major male pelvic procedures w CC	2.3371	10.4	9.4	2	33	21
335 Major male pelvic procedures w/o CC	1.8785	8.5	8.0	2	23	15
336 Transurethral prostatectomy w CC	1.0384	5.1	4.6	1	18	11
337 Transurethral prostatectomy w/o CC	0.7598	4.0	3.7	1	12	7
338 Testes procedures, for malignancy	0.9468	4.7	3.1	1	27	19
339 Testes procedures, non-malignancy age >17	0.5402	2.0	1.6	1	10	5
340 Testes procedures, non-malignancy age 0–17	0.4269	1.4	1.3	1	4	2
341 Penis procedures	1.0010	4.0	3.1	1	27	13
342 Circumcision age >17	*0.4489	2.9	2.1	1	20	7
343 Circumcision age 0–17	0.3788	0.0	1.7	1	6	6
344 Other male reproductive system O.R. procedures for malignancy	1.1962	5.8	4.1	1	28	21
345 Other male reproductive system O.R. proc except for malignancy	0.9137	4.8	3.3	1	27	16

DRG Description	Weight	Arithmetic ALOS	Geometric ALOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
346 Malignancy, male reproductive system, w CC	1.2738	8.9	5.9	1	29	22
347 Malignancy, male reproductive system, w/o CC	0.6370	4.1	2.3	1	26	14
348 Benign prostatic hypertrophy w CC	0.6454	3.1	2.7	1	14	7
349 Benign prostatic hypertrophy w/o CC	0.5727	2.5	2.51	1	13	7
350 Inflammation of the male reproductive system	0.6300	4.0	3.3	1	22	11
351 Sterilization, male	*0.3333	0.0	1.3	1	5	5
352 Other male reproductive system diagnoses	0.4365	2.5	1.9	1	16	7
353 Pelvic evisceration, radical hysterectomy & radical volvectomy	2.0552	9.6	8.9	2	27	18
354 Uterine, adnexa proc for non-ovarian/adnexal malig w CC	1.4148	6.9	6.4	1	20	13
355 Uterine, adnexa proc for non-ovarian/adnexal malig w/o CC	0.9544	5.1	4.8	1	14	9
356 Female reproductive system reconstructive procedures	0.8739	4.9	4.5	1	17	10
357 Uterine & adnexa proc for ovarian or adnexal malignancy	1.7333	8.3	7.5	1	28	17
358 Uterine & adnexa proc for non-malignancy w CC	1.2198	5.9	5.4	1	17	11
359 Uterine & adnexa proc for non-malignancy w/o CC	0.9268	4.7	4.4	1	11	8
360 Vagina, cervix & vulva procedures	0.6149	2.9	2.1	1	19	8
361 Laparoscopy & Incisional tubal interruption	0.7106	3.0	2.3	1	21	9
362 Endoscopic tubal interruption	0.3857	1.4	1.3	1	4	2
363 D&C, conization & radio-implant, for malignancy	0.6777	3.3	2.7	1	18	9
364 D&C, conization except for malignancy	0.4494	1.8	1.5	1	8	4
365 Other female reproductive system O.R. procedures	1.2742	6.5	5.2	1	29	18
366 Malignancy, female reproductive system w CC	1.3022	8.2	5.1	1	29	22
367 Malignancy, female reproductive system w/o CC	0.6209	3.2	2.5	1	21	10
368 Infections, female reproductive system	0.6268	4.0	3.5	1	17	9
369 Menstrual & other female reproductive system disorders	0.4616	2.8	2.3	1	16	8
370 Cesarean section w CC	0.9550	5.5	5.0	1	16	10
371 Cesarean section w/o CC	0.7614	4.4	4.2	1	9	7
372 Vaginal delivery w complicating diagnoses	0.5839	3.5	3.0	1	15	8
373 Vaginal delivery w/o complicating diagnoses	0.3872	2.4	2.2	1	7	4
374 Vaginal delivery w sterilization &/or D&C	0.6175	2.7	2.6	1	7	5
375 Vaginal delivery w O.R. proc except steril &/or D&C	0.7976	3.8	3.4	1	15	8
376 Postpartum & post abortion diagnoses w/o O.R. procedure	0.4729	3.0	2.5	1	15	8
377 Postpartum & post abortion diagnoses w O.R. procedure	0.6837	2.9	2.2	1	19	9
378 Ectopic pregnancy	0.7866	3.6	3.3	1	11	7
379 Threatened abortion	0.3189	2.6	1.9	1	16	7
380 Abortion w/o D&C	0.2900	1.6	1.4	1	5	3
381 Abortion w D&C, aspiration curettage or hysterotomy	0.3756	1.3	1.2	1	4	2
382 False labor	0.1505	1.3	1.2	1	3	2
383 Other antepartum diagnoses w medical complications	0.3507	3.2	2.6	1	18	9
384 Other antepartum diagnoses w/o medical complications	0.3267	2.7	1.9	1	17	8
385 Neonates, died or transferred to another acute care facility						
386 Extreme immaturity or respiratory distress syndrome, neonate						
387 Prematurity w major problems						
388 Prematurity w/o major problems						
389 Full term neonate w major problems						
390 Neonate w other significant problems						
391 Normal newborn	0.1254	2.5	2.3	1	8	5
392 Splenectomy age >17	3.3499	10.8	8.6	1	32	25
393 Splenectomy age 0–17	1.8646	8.3	6.5	1	30	23
394 Other O.R. procedures of the blood and blood forming organs	0.8900	4.5	2.7	1	26	17
395 Red blood cell disorders age >17	0.8831	5.8	4.1	1	28	21
396 Red blood cell disorders age 0–17	0.6383	4.3	3.3	1	27	13
397 Coagulation disorders	0.7515	4.2	3.3	1	27	13
398 Reticuloendothelial & immunity disorders w CC	1.6798	9.0	7.0	1	30	23
399 Reticuloendothelial & immunity disorders w/o CC	0.7722	5.0	3.8	1	27	15
400 Lymphoma & leukemia w major O.R. procedure	2.3408	10.4	7.8	1	31	24
401 Lymphoma & non-acute leukemia w other O.R. proc w CC	3.2942	12.3	9.1	1	33	26
402 Lymphoma & non-acute leukemia w other O.R. proc w/o CC	1.0219	4.8	3.5	1	27	15
403 Lymphoma & non-acute leukemia w CC	2.2689	11.3	7.1	1	31	24
404 Lymphoma & non-acute leukemia w/o CC	0.9988	5.2	3.7	1	27	18
405 Acute leukemia w/o major O.R. procedure age 0–17	1.8472	7.1	4.7	1	28	21
406 Myeloprolif disord or poorly diff neopl w maj O.R. proc w CC	3.4137	14.0	9.7	1	33	26
407 Myeloprolif disord or poorly neopl w maj O.R. proc w/o CC	1.7546	7.3	5.9	1	29	22
408 Myeloprolif disord or poorly neopl w other O.R. proc	1.0090	4.5	3.3	1	27	14
409 Radiotherapy	0.8846	6.3	4.0	1	28	21
410 Chemotherapy	0.6309	2.9	2.3	1	16	8
411 History of malignancy w/o endoscopy	0.4731	4.2	2.7	1	26	15
412 History of malignancy w endoscopy	*0.4334	3.1	2.2	1	22	4
413 Other myeloprolif dis or poorly diff neopl diag w CC	1.8090	10.3	6.7	1	30	23
414 Other myeloprolif dis or poorly diff neopl diag w/o CC	0.9089	6.0	3.8	1	27	20
415 O.R. procedure for infectious & parasitic diseases	3.1605	13.5	9.1	1	33	26
416 Septicemia age >17	2.0493	9.2	7.0	1	30	23
417 Septicemia age 0–17	0.7208	5.2	4.2	1	28	14

DRG Description	Weight	Arithmetic ALOS	Geometric ALOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
418 Postoperative & post-traumatic infections	0.9173	6.3	5.1	1	29	17
419 Fever of unknown origin age > w CC	0.9874	5.7	4.4	1	28	17
420 Fever of unknown origin age > w/o CC	0.8436	5.2	4.3	1	28	14
421 Viral illness age >17	0.6068	4.0	3.3	1	21	10
422 Viral illness & fever of unknown origin age 0–17	0.4089	3.2	2.7	1	13	7
423 Other infectious & parasitic diseases diagnoses	1.1962	6.9	4.6	1	28	21
424 O.R. procedure w principal diagnoses of mental illness	2.1588	20.3	13.0	1	37	30
425 Acute adjust react & disturbances of psychosocial dysfunction	0.6574	5.9	3.4	1	27	20
426 Depressive neuroses	1.3160	10.9	6.9	1	30	23
427 Neuroses except depressive	1.1796	12.3	7.0	1	30	23
428 Disorders of personality & impulse control	1.6599	14.0	8.4	1	32	25
429 Organic disturbances & mental retardation	1.5299	11.7	7.6	1	31	24
430 Psychoses	1.4625	13.6	9.5	1	33	26
431 Childhood mental disorders	2.6976	23.3	16.2	1	40	33
432 Other mental disorder diagnoses	2.2021	22.1	15.4	1	39	32
433 Alcohol/drug abuse or dependence, left AMA	0.7758	9.5	6.2	1	30	23
434 Alc/drug abuse or depend, detox or oth sympt treat w CC	1.3413	11.9	7.5	1	31	24
435 Alc/drug abuse or depend, detox or oth sympt treat w/o CC	1.8056	24.2	21.3	3	45	38
436 Alc/drug dependence w rehabilitation therapy	1.4419	21.5	17.6	1	41	34
437 Alc/drug dependence, combined rehab & detox therapy						
438 No longer valid						
439 Skin grafts for injuries	2.2954	8.9	6.5	1	30	23
440 Wound debridements for injuries	1.8580	8.9	5.6	1	20	22
441 Hand procedures for injuries	0.7770	2.6	2.0	1	15	7
442 Other O.R. procedures for injuries w CC	2.8150	11.0	6.7	1	30	23
443 Other O.R. procedures for injuries w/o CC	1.2378	5.3	3.1	1	27	20
444 Multiple trauma age >17 w CC	0.7845	3.9	3.2	1	25	12
445 Multiple trauma age >17 w/o CC	0.6607	4.1	2.8	1	26	13
446 Multiple trauma age 0–17	0.4757	3.0	2.1	1	21	9
447 Allergic reactions age >17	0.4364	2.2	1.8	1	10	5
448 Allergic reactions age 0–17	0.3958	2.1	1.8	1	10	5
449 Poisoning & toxic effects of drugs age >17 w CC	0.8694	4.4	2.8	1	26	15
450 Poisoning & toxic effects of drugs age >17 w/o CC	0.5020	2.8	1.9	1	19	8
451 Poisoning & toxic effects of drugs age 0–17	0.3509	2.0	1.6	1	10	5
452 Complications of treatment w CC	1.2088	6.4	4.1	1	28	21
453 Complications of treatment w/o CC	0.5001	3.4	2.4	1	25	11
454 Other injury, poisoning & toxic effect diag w CC	2.0224	5.8	3.0	1	27	20
455 Other injury, poisoning & toxic effect diag w/o CC	0.4224	2.2	1.6	1	12	6
456 Burns, transferred to another acute care facility	0.6173	5.2	4.3	1	28	16
457 Extensive burns w/o O.R. procedure	*2.6766	8.3	3.6	1	28	21
458 Non-extensive burns w skin graft	3.5975	16.0	11.4	1	35	28
459 Non-extensive burns w wound debridement or other O.R. proc	1.8676	11.0	6.7	1	30	23
460 Non-extensive burns w/o O.R. procedure	1.1229	6.5	3.9	1	27	20
461 O.R. proc w diagnoses of other contact w health services	0.8575	4.0	2.5	1	26	13
462 Rehabilitation	2.5400	24.7	20.6	2	44	37
463 Signs & symptoms w CC	0.8275	6.7	4.6	1	28	21
464 Signs & symptoms w/o CC	0.5878	3.8	2.8	1	25	11
465 Aftercare w history of malignancy as secondary diagnosis	* 0.3436	2.5	1.9	1	14	9
466 Aftercare w/o history of malignancy as secondary diagnosis	0.5349	3.2	2.2	1	24	10
467 Other factors influencing health status	0.4054	3.0	2.1	1	21	9
468 Unrelated operating room procedures	2.1643	8.4	5.1	1	29	22
469 Principal diagnosis invalid as discharge diagnosis						
470 Ungroupable						
471 Bilateral or multiple major joint procs of lower extremity	4.9822	16.9	15.8	5	39	32
472 Extensive burns w O.R. procedure	* 12.2265	33.6	19.1	1	43	22
473 Acute leukemia w/o major O.R. procedure age >17	4.6420	17.9	8.9	1	32	25
474 Respiratory system diagnosis with tracheostomy	10.8509	25.4	20.3	2	44	37
475 Respiratory system diagnosis with ventilator support	3.9292	10.4	9.1	1	33	26
476 Unrelated protastic or procedure	1.9516	10.9	10.0	2	33	26
477 Unrelated non-extensive or procedure only	1.0420	5.6	3.5	1	27	20
600 Neonate, died within one day of birth	0.2046		2.2	1	1	1
601 Neonate, transferred <5 days old	0.2136		1.4	1	1	1
602 Neonate, but <750g, disch alive	6.6400		52.0	4	69	69
603 Neonate, bwt <750g, died	2.2736		7.4	1	24	24
604 Neonate, bwt 750–999g, disch alive	6.0740		71.2	20	88	88
605 Neonate, bwt 750–999g, died	2.9237		9.3	1	26	26
606 Neonate, bwt 1,000–1,499g, with signif or proc. disch alive	5.8513		62.7	14	80	80
607 Neonate, bwt 1,000–1,499g, w/o signif or proc. disch alive	3.0242		42.8	12	60	60
608 Neonate, bwt 1,000–1,499g, died	2.8813		9.4	1	26	26
609 Neonate, bwt 1,500–1,999g, with signif or proc, with mult major problems	4.7487		40.9.	8	58	58
610 Neonate, bwt 1,500–1,999g, with signif or proc, w/o mult major problems	1.8088		19.6	3	37	37
611 Neonate, bwt 1,500–1,999g, w/o signif or proc, with mult major problems	2.1175		24.8	6	42	42

DRG Description	Weight	Arithmetic ALOS	Geometric ALOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
612 Neonate, bwt 1,500–1,999g, w/o signif orproc, with major problem	1.1013		18.5	4	36	36
613 Neonate, bwt 1,500–1,999g, w/o signif or proc, with minor problem	0.7344		15.8	3	33	33
614 Neonate, bwt 1,500–1,999g, w/o signif or proc, with other problems	0.7344		15.8	3	33	33
615 Neonate, bwt 2,000–2,999g, with signif or proc, with mult major problems	3.7853		28.2	6	45	45
616 Neonate, BWT 2,000–2,499g, with signif or proc, w/o mult major problems	1.1671		14.2	4	31	31
617 Neonate, BWT 2,000–2,499g, w/o signif or proc, with mult major problems	1.4389		13.5	3	31	31
618 Neonate, BWT 2,000–2,499g, w/o signif or proc, with mult major problems	0.7488		10.5	3	28	28
619 Neonate, BWT 2,000–2,499g, w/o signif or proc, with mult major problems	0.4699		8.4	1	25	25
620 Invalid DRG						
621 Neonate, BWT 2,000–2,499g, w/o signif or proc, with mult major problems	0.3532		5.7	1	19	19
622 Neonate, BWT >2,499g, with signif or proc, with mult major problems	2.9785		19.2	4	36	36
623 Neonate, BWT >2,499g, w/o signif or proc, with mult major problems	0.8844		8.9	2	26	26
624 Neonate, BWT >2,499g, with minor abdom proc	0.1987		2.8	1	8	8
625 No longer valid						
626 Neonate, BWT >2,499g, w/o signif or proc, with mult major problems	1.3401		9.4	1	26	26
627 Neonate, BWT >2,499g, w/o signif or proc, with major problems	0.5166		5.8	1	20	20
628 Neonate, BWT >2,499g, w/o signif or proc, with minor problems	0.2347		3.8	1	10	10
629 Invalid DRG						
630 Neonate, BWT >2,499g, w/o signif or proc, with mult major problems	0.1364		3.2	1	7	7
631 BPD and other chronic resp diseases arising in perinatal period						
632 Other resp problems after birth						
633 Multiple, other and unspecified congenital anomalies, with CC						
634 Multiple, other and unspecified congenital anomalies, w/o CC						
635 Neonatal aftercare for weight gain						
636Neonatal diagnosis, age >28 days	1.7778		3.9	1	20	20
900 Alc/drug abuse or dep, detox, oth w/o CC age 0–21	1.8081	22.1	13.6	1	37	30
901 Alc/drug abuse or dep, detox, oth w/o CC age >21	1.2199	13.8	8.6	1	32	25

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

The following children's hospitals have been determined to be high-volume children's hospitals, because they had more than 50 CHAMPUS discharges during FY 1988.

TABLE 3.—HIGH-VOLUME CHILDREN'S HOSPITALS

[Effective for admissions occurring on or after April 1, 1989]

Children's Hospital	Boston, MA
Children's Hospital	Buffalo, NY
Children's Hospital of Phildelphia.	Phildelphia, PA
Children's Hospital of Pittsburgh.	Pittsburgh PA
Children's Hospital National Medical center.	Washington, DC
Children's Hospital	Norfolk, VA
Henrietta Egleston Hospital	Atlanta, GA
Scottish Rite Children's Hospital.	Atlanta, GA
Baptist Medical Center	Jacksonville, FL
Miami Children's Hospital	Miami, FL

TABLE 3.—HIGH-VOLUME CHILDREN'S HOSPITALS—Continued

[Effective for admissions occurring on or after April 1, 1989]

All Children's Hospital	St. Petersburg, FL
Children's Hospital Medical Center.	Akron, OH
Children's Hospital	Columbus, OH
Children's Medical Center	Dayton, OH
Children's Memorial Hospital	Chicago, IL
Children's Hospital of Michigan.	Detroit, MI
East Tennessee Children's Hospital.	Knoxville, TN
Le Bonheur Children's Medical Center.	Memphis, TN
Children's Hospital of Alabama.	Birmingham, AL
Children's Mercy Hospital	Kansas City, MO
Cardinal Glennon Children's Hospital.	St. Louis, MO
Children's Hospital	St. Louis, MO

TABLE 3.—HIGH-VOLUME CHILDREN'S HOSPITALS—Continued

[Effective for admissions occurring on or after April 1, 1989]

Arkansas Children's Hospital	Little Rock, AR
Driscoll Foundation Children's Hospital.	Corpus Christi, TX
Children's Hospital and Medical Center.	Seattle, WA
Valley Children's Hospital	Fresno, CA
Children's Hospital of Los Angeles.	Los Angeles, CA
Children's Hospital of Orange County.	Orange, CA
Children's Hospital and Health Center.	San Diego, CA
Kapiolani Women's and Children's Hospital.	Honolulu, HI
Primary Children's Medical Center.	Salt Lake City, Ut

[FR Doc. 89–6786 Filed 3–21–89; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Global Positioning System

AGENCY: Command, Control, Communications, and Intelligence (C^3I), Defense.

ACTION: Use of the Global Positioning System (GPS).

SUMMARY: The Department of Defense (DoD) recently launched a second generation Global Positioning System (GPS) satellite that will join the current research and development (R&D) constellation. Launch of these "Block II" satellites will continue until a constellation of 21 satellites plus 2 on-orbit spares is in position. When 21 useable satellites are in their proper positions, the DoD will announce that the GPS is fully operational.

During constellation build-up, GPS satellites will transmit signals which are intended primarily for military purposes. GPS signals will be subject to change without prior notice and may be turned on and off at any time. The DoD will also implement a technique known as selective availability. During the build-up, nominal Standard Positioning Service (SPS) may be disrupted and accuracy may exceed the 100 meters (2 drms) level stated in the Federal Radionavigation Plan. SPS are those signals which are broadcast in the clear and are available to all users. All civil users are therefore advised that the use of GPS for positioning, navigation, time transfer, or any other purpose, will be at their own risk.

ADDRESS: Office of the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence, Room 3D174, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Russell Nakamura, telephone (202) 695–6123, for general information of GPS.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 17, 1989.

[FR Doc. 89–6785 Filed 3–21–89; 8:45 am]

BILLING CODE 3810–01–M

Advisory Group on Electron Devices; Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday and Wednesday, 18 & 19 April 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II sec. 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 16, 1989.

[FR Doc. 89–6697 Filed 3–21–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Privacy Act of 1974; Amendments to a System of Records.

AGENCY: Department of the Army, DOD.

ACTION: Notice of amendments to a system of records subject to the Privacy Act of 1974.

SUMMARY: The Department of the Army is amending one of its existing inventory of record system subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice on April 21, 1989, unless comments are received which result in a contrary determination.

ADDRESS: Send comments to the record system manager identified in the record system notice set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Jones, ASOP-MR, Fort Huachuca, AZ 85613–5000, telephone: 602–538–6568, autovon: 879–6568.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

(50 FR 22090) May 29, 1985 (Compilation)
(51 FR 23576) June 30, 1986
(51 FR 30900) August 29, 1986
(51 FR 40479) November 7, 1986
(51 FR 44361) December 9, 1986
(52 FR 11847) April 13, 1987
(52 FR 18798) May 19, 1987
(52 FR 25905) July 9, 1987
(52 FR 32329) August 27, 1987
(52 FR 43932) November 17, 1987
(53 FR 12971) April 20, 1988
(53 FR 16575) May 10, 1988
(53 FR 21509) June 8, 1988
(53 FR 28247) July 27, 1988
(53 FR 28249) July 27, 1988
(53 FR 28430) July 28, 1988
(53 FR 34576) September 7, 1988
(53 FR 49586) December 8, 1988
(53 FR 51580) December 22, 1988

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, published in its entirety.

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(r), which require the submission of a new or altered system report.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 16, 1989.

Amendment

A0728.01DAAG

System name. Army Retirement Services Program Files.

Where published last. (50 FR 22090) May 29, 1985. *Changes:* Change system numbers from "A0728.01DAAG" to "A0728.01CFSC".

System location. Delete "Office of the The Adjutant General, Headquarters, Department of the Army, 2461 Eisenhower Avenue, Alexandria, VA 22331." Add "Office of Retired and Veterans Affairs, Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses. Delete "at 48 FR 25503, June 6, 1983." Add "set forth at the beginning of the Army's listing of records system notices."

System manager(s) and address. Delete "The Adjutant General, Headquarters, Department of the Army, 2461 Eisenhower Avenue, Alexandria,

VA 22331." Add "Office of Retired Veterans Affairs, Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521."

Notification procedure. Delete "ATTN: Director, Personnel and Community Support Activities (DAAG–DP)." Add "ATTN: Retired Activities (CFSC–FSR)."

A0728.OICFSC

SYSTEM NAME:

Army Retirement Services Program Files.

SYSTEM LOCATION:

Office of Retired and Veterans Affairs, Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521. Segments of this system exist at Headquarters, Forces Command, Fort McPherson, GA; U.S. Army Training and Doctrine Command, Fort Monroe, VA; Headquarters, Military District of Washington; and installations operating retiree councils and/or service activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All retired Army personnel and eligible members of their families; active and retired members of other uniformed services and their eligible family members in geographical areas where their present organization does not offer services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Retiree's name, grade, retirement class/date/code, SSN, branch of service, date of birth, component, years of service, percentage of disability, sex, and home address; biographical sketch of retirees seeking appointment to the Army Chief of Staff Retiree Councils comprising much of the above information and supplemented by description of involvement in military and civic affairs since retirement, statement of willingness to serve pursuant to Army Regulation 608–25, correspondence between Army and applicant regarding acceptance/nonselection, active duty training orders; and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., sections 1588 and 3966.

PURPOSE(S):

To inform retirees and eligible members of their families of their rights, benefits, and privileges; pending legislation and policies affecting them; to provide the Army insight into problems and needs of the retirees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes and printouts; microfiche.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessed only by individuals having official need therefor, within buildings protected by security guards during non-duty hours.

RETENTION AND DISPOSAL:

Magnetic tapes contining names and addresses of retirees are updated periodically to reflect current information; information is retained until no longer needed. Correspondence and documents related to the Army Chief of Staff Retiree Councils are retained 5 years, following which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Retired and Veterans Affairs, Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: Retired Activities (CFSC–FSR). Individual must furnish full name, address and telephone number, and sufficient details to locate the record.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records pertaining to them in this system of records should write as indicated in "Notification procedure," providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–6698 Filed 3–21–89;8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 10, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract.

Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: March 17, 1989.

George Sotos,

Acting Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: New Collection.

Title: Gifted and Talented Program.

Frequency: Annually.

Affected Public: State and local Government.

Abstract: This form will be used by eligible applicants to apply for grants under the Jacob K. Javits Gifted and Talented Students Education Program. The Department uses the information to make grant awards.

Additional Information: The Jacob K. Javits Gifted and Talented Students Education Program is requesting an expedited review for these applications in order to process the grant awards in a timely fashion. This submission contains the Standard Form SF–424, Federal Assistance Fact sheet and SF–424A Budget Information.

Reporting Burden:

Responses: 400

Burden Hours: 12,000

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

BILLING CODE 4000-01-M

Instructions for Part III--Application Narrative

Before preparing the application narrative, an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

Public reporting burdens for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of informations. Send comments regarding this burden estimates or any other aspect of this collection of information including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503

The Narrative should encompass each function or activity for which funds are being requested and should:

1. Begin with an abstract, that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which these criteria are listed in this notice;

3. Describe how the proposed project will meet one or both of the absolute priorities and any of the invitational priorities listed in this notice;

4. Clearly identify any component of the project that will serve gifted and talented students who are economically disadvantaged.

5. For multi-year applicants, describe how the evaluation design will answer questions about the success of your project and about the relationship between the project's outcomes and the project's stated goals.

6. Include any other pertinent information that might assist the Secretary in reviewing the application, including the scope and degree of service and when it will be delivered. The application should enable reviewers to make clear linkage between the proposed project and specific project tasks, operation, and service delivery.

Please limit the application narrative to no more than 30 double-spaced, typed pages (on one side only). Supplemental documentation (not to exceed 25 pages) may be attached to the program narrative and is not counted as part of the 30 pages of narrative.

Assurances -- Jacob K. Javits Gifted and Talented Students Education Program

The applicant hereby assures and certifies that it will:

1. Provide for the equitable participation of students and teachers in private nonprofit elementary and secondary schools, including the participation of teachers and other personnel in preservice and inservice training programs supported under the Act;

2. Use all grant funds to supplement and make more effective the expenditure of State and local funds, and of Federal funds made available under Chapter 2 of Title I and Title II of the Elementary and Secondary Education Act for the gifted and talented students.

Signature

Name

Title

Date

[FR Doc. 89-6787 Filed 3-21-89; 8:45 am]
BILLING CODE 4000-01-C

Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 21, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 17, 1989.

George Sotos,

Acting Director, for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Longitudinal Study of a Sample of Handicapped Students: School Program Substudy.

Frequency: One time.

Affected Public: Individuals or households; State and local governments.

Reporting Burden:

Responses: 490

Burden Hours: 365

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: The purpose of this substudy is to obtain a more thorough description and understanding of the relationships among school experiences and transition outcomes for a major portion of youth served in special education in secondary school and in transition to adulthood. Information will be collected on youth about to leave school regarding characteristics of schools they attend, 4 year pattern of attendance, courses taken, youths' behvaior and abilities, nature of disabilities, family support for education and individual achievement.

[FR Doc. 89–6788 Filed 3–21–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief describing the proposed collection and the respondents.

DATES: Comments must be filed by April 21, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–871A/F
3. 1905–0145
4. Commercial Buildings Energy Consumption Survey
5. Revision
6. Triennially
7. Mandatory
8. State and local governments, Businesses or other for profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
9. 19,125 respondents triennially
10. 6375 responses annually

11. The estimated average hours per response for each of the respondents is .691 burden hours.

12. The estimated total reporting hours are 4,404.

13. EIA–871A/F will collect data on energy consumption by commercial buildings and the characteristics of these buildings. These surveys fulfill planning, analyses and decision-making needs and requirements within DOE, other federal agencies, State governments, and the private sector. Respondents are owners/managers of selected commercial buildings and their energy suppliers.

Statutory Authority: Section 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, March 15, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–6692 Filed 3–21–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES89–18–000 et al.]

Iowa Public Service Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

March 16, 1989.

Take notice that the following filings have been made with the Commission:

1. Iowa Public Service Co.

[Docket No. ES89–18–000]

Take notice that on March 3, 1989, Iowa Public Service Company filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue up $125 million of short-term unsecured promissory notes to commercial banks and its parent or affiliated companies and commercial paper dealers. All proposed notes are to be issued on or before March 31, 1990, and will bear final maturity dates not later than March 31, 1991.

Comment date: March 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Don C. Frisbee

[Docket No. ID–2388–000]

Take notice that on February 24, 1989, Don C. Frisbee ("Applicant") filed an application under the provisions of section 305(b) of the Federal Power Act, and in conformance with 18 CFR 45.8 of the Commission's regulations, seeking an order of this Commission authorizing the Applicant to continue to hold the positions of Chairman of the Board and Director of PacificCorp, a public utility as defined under the Federal Power Act, and Director of each of First Interstate Bank of Oregon, N.A., a bank, and its parent corporation, First Interstate Bancorp.

Neither First Interstate Bancorp nor First Interstate Bank of Oregon, N.A. are authorized by law to underwrite or participate in the marketing of the securities of a "public utility," within the meaning of section 201(E) of the Federal Power Act. However, First Interstate Bancorp owns all of the outstanding capital stock of First Interstate Bank, Ltd., which owns all of the shares of First Interstate Trust Company of New York, which, in turn, owns all of the shares of FIL Holding Company, which, in turn, owns all of the shares of First Interstate Capital Markets Limited ("FICML"), a corporation chartered in the United Kingdom and based in London. FICML (formerly Continental Illinois Limited) became a part of the First Interstate Bancorp corporate structure in August 1984. The Applicant has learned that on one occasion, in January 1985, FICML served as co-manager of an underwriting syndicate for $75,000,000 (U.S.) of 13% Notes due 1992 issued by Gulf States Utilities Company. Gulf States Utilities Company is a "public utility," within the meaning of section 201(e) of the Federal Power Act. That transaction is the only underwriting or participation in the marketing of securities of a "public utility," within the meaning of section 201(e) of the Federal Power Act, by First Interstate Bancorp, First Interstate Bank of Oregon, N.A. or their affiliates.

Comment date: March 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. F. Richard Brown

[Docket No. ID–2389–000]

Take notice that on February 24, 1989, F. Richard Brown, ("Applicant"), filed an application under the provisions of section 305(b) of the Federal Power Act, and in conformance with 18 CFR 45.8 of the Commission's regulations, seeking an order of this Commission authorizing the Applicant to continue to hold the positions of Vice President of Pacific Power & Light Company, one of the assumed business names of PacificCorp, a public utility as defined under the Federal Power Act, and Director of First Interstate Bank of Larmie, N.A., a bank and a wholly owned subsidiary of First Interstate Bancorp.

Neither First Interstate Bancorp nor First Interstate Bank of Laramie, N.A. are authorized by law to underwrite or participate in the marketing of securities of a "public utility," within the meaning of section 201(e) of the Federal Power Act. However, First Interstate Bancorp owns all of the outstanding capital stock of First Interstate Bank, Ltd., which owns all of the shares of First Interstate Trust Company of New York, which, in turn, owns all of the shares of FIL Holding Company, which, in turn, owns all of the shares of First Interstate Capital Markets Limited ("FICML"), a corporation chartered in the United States Kingdom and based in London. FICML (formerly Continental Illinois Limited) became a part of the First Interstate Bancorp corporate structure in August 1984. The applicant has learned that on one occasion, in January 1985, FICML served as co-manager of an underwriting syndicate for $75,000,000 (U.S.) of 13% Notes due 1992 issued by Gulf States Utilities Company. Gulf States Utilities Company is a "public utility," within the meaning of section 201(e) of the Federal Power Act. That transaction is the only underwriting or participation in the marketing of securities of a "public utility," within the meaning of section 201(e) of the Federal Power Act, by First Interstate Bank of Laramie, N.A. or its affiliates.

Comment date: March 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Bruce G. Willison

[Docket No. ID–2387–000]

Take notice that on February 24, 1989, Bruce G. Willison ("Applicant") filed an application under section 305(b) of the Federal Power Act to hold the following positions:

Position	Name of corporation	Classification
Chairman of the Board, Chief Executive Office and Director.	First Interstate Bank.	Bank subsidiary of Bank Holding Company that also has a subsidiary authorized to underwrite.
	Portland General Electric Company.	Public Utility.

Comment date: March 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Wo.

[Docket No. ER89–262–000]

Take notice that on March 1, 1989, Southwestern Electric Power Company (SWEPCO) tendered for filing the final return on common equity ("Final ROE")

to be used in redetermining or "truing-up" cost-of-service formula rates for wholesale service in 1988 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, the City of Hope, Arkansas, the Oklahoma Municipal Power Authority, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc. and TEX-LA Electric Cooperative of Texas, Inc. SWEPCO provides service to these customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity.

Copies of the filing were served upon the affected wholesale customers, the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: March 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Co.

[Docket No. ER89-267-000]

Take notice that on March 8, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing an initial rate schedule, an agreement entitled Special Facilities Agreement For Interconnection of North Fork Stanislaus River Project Collierville Powerhouse (Special Facilities Agreement), between Northern California Power Agency (NCPA) and PG&E.

The Special Facilities Agreement pertains to the rate, terms, and conditions under which PG&E will own, operate, and maintain the termination facilities specially installed and maintain the termination facilities specially installed in order to provide the interconnection. Under the Special Facilities Agreement, PG&E charges NCPA a customer advance and a monthly Cost of Ownership Rate, equal to the Cost of Ownership Rate for Transmission-level, customer-financed facilities filed with the California Public Utilities Commission (CPUC) pursuant to Electric Rule 2. The cost of Ownership Rate is expressed as a monthly percentage of the installed cost of the facilities.

PG&E has requested an effective date of June 1, 1989. PG&E has also requested to be allowed automatic rate adjustments whenever the CPUC authorizes a new Electric Rule 2 Cost of Ownership Rate.

Copies of this filing were served upon NCPA and the CPUC.

Comment date: March 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Arkansas Power & Light Co.

[Docket No. ER89-260-000]

Take notice that on March 1, 1989, Arkansas Power & Light Company (AP&L) tendered for filing a redetermined Transmission Demand Rate, revenue comparison and supporting workpapers concerning the Transmission Service Agreement between AP&L and Louisiana Energy & Power Authority.

AP&L proposes an effective date for the new rate of March 1, 1989.

Comment date: March 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6719 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-105-000]

Arkla Energy Resources, a Division of Arkla, Inc., Proposed Change in FERC Gas Tariff

March 17, 1989.

Take notice that on March 13, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc. tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1-A:

First Revised Sheet No. 76B

Original Sheet No. 76C

AER states that these sheets are filed in order to provide an open season for requests for new firm transportation service. AER proposes that the open season commence on March 2, 1989 and expire on April 14, 1989. With regard to new qualifying requests for firm transportation service received during the open season, these tariff sheets shall supersede the currently effective provisions governing the priority of requests for firm transportation service as set forth in AER's transportation tariff. AER proposes an effective date of March 2, 1989.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by March 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6734 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-56-002]

Blue Dolphin Pipe Line Co.; Tariff Change

March 17, 1989

Take notice that on March 10, 1989, Blue Dolphin Pipe Line Company (Blue Dolphin), tendered for filing with the Commission, to be effective on March 1, 1989, the following tariff sheet to be included in Blue Dolphin's FERC Gas Tariff:

Original Volume No. 1

Substitute First Revised Sheet No. 91

Blue Dolphin states that the purpose of its filing this tariff sheet is to comply with the requirement of the Commission's order issued February 28, 1989, accepting all tariff sheets filed by Blue Dolphin on January 27, 1989, in this proceeding but First Revised Sheet No. 91. First Revised Sheet No. 91 was filed along with a number of other tariff sheets intended to comply with Order No. 509. Blue Dolphin also withdraws its First Revised Sheet No. 91, refiled March 3, 1989. As explained in its application, the Blue Dolphin states that the substitute tariff sheet has incorporated language that is consistent with the February 28, 1989, order.

Blue Dolphin asks for whatever waivers are necessary for the

Commission to approve the proposed tariff sheet, and for the tariff sheet to go into effect on March 1, 1989.

Any persons desiring to be heard or to make any protest with reference to said filing should, on or before March 24, 1989, file with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6735 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2559, Maine]

Central Maine Power Co.; Intent to File an Application for a New License

March 17, 1989.

Take notice that on December 30, 1988, Central Maine Power Company, the existing licensee for the Oakland Hydroelectric Project No. 2559, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2559 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Messalonskee Stream in Kennebec County, Maine. The principal works of the Oakland Project include a 14-foot-high, 115-foot-long concrete dam with a Taintor gate section, an overflow section and an intake section; a reservoir of 9.6 acres at elevation 207.1 feet USGS Datum; a 10-foot-diameter, 530-foot-long steel penstock with a surge tank; a powerhouse with an installed capacity of 2,800 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Edison Drive, Augusta, ME 04336.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6738 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2557, Maine]

Central Maine Power Co.; Intent To File an Application for a New License

March 17, 1989.

Take notice that on December 30, 1988, Central Maine Power Company, the existing licensee for the Rice Rips Hydroelectric Project No. 2557, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. The original license for Project No. 2557 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Messalonskee Stream in Kennebec County, Maine. The principal works of the Rice Rips Project inlcude a 31-foot-high, 220-foot-long concrete gravity dam with an Ambursen type overflow spillway; a reservoir of 87 acres at elevation 139.1 feet USGS Datum; a 10-foot-diameter, 2,325-foot-long pipeline to a surge pond; a 34-foot-high, 273-foot-long Ambursen type dam forming the surge pond; a powerhouse, integral with the surge pond dam, with an installed capacity of 1,600 kW; a transmission line connection; and appurtenances.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Edison Drive, Augusta, ME 04336.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6739 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2527 Maine]

Central Maine Power Co.; Intent To File an Application for a New License

March 17, 1989.

Take notice that on December 30, 1988, Central Maine Power Company, the existing licensee for the Skelton Hydroelectric Project No. 2527, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2527 was issued effective April 1, 1947, and expires December 31, 1993.

The project is located on the Saco River in York County, Maine. The principal works of the Skelton Project include a 1,965-foot-long composite dam having a 13-foot-high, 1,200-foot-long earthfill section, two 150-foot-wide concrete spillway sections, a 107-foot-wide gated intake section, a fishway, a log sluice, and two nonoverflow concrete sections; a reservoir of 488 acres at elevation 127.0 feet USGS Datum; a powerhouse with an installed capacity of 16,800 kW; two 6.9/38-kV transformers and transmission line connections; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Edison Drive, Augusta, ME 04336.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6740 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2325, Maine]

Central Maine Power Co.; Intent To File an Application for a New License

March 16, 1989

Take notice that on December 30, 1988, Central Maine Power Company, the existing licensee for the Weston Hydroelectric Project No. 2325, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. The original license for Project No. 2325 was issued effective May 1, 1954, and expires December 31, 1993.

The project is located on the Kennebec River in Somerset County, Maine. The principal works of the Weston Project include a north channel concrete gravity overflow dam, 38 feet high and 529 feet long, with stop-log, flashboard & Traintor gate sections, and a south channel concrete dam, 392 feet long, with stop-log, flashboard & Taintor gate sections and powerhouse intake structure; a 930-acre reservoir at elevation 156 feet USGS Datum; a powerhouse with an installed capacity of 12,000 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at Edison Drive, Augusta, ME 04336.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–6743 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2329, Maine]

Central Maine Power Co.; Intent To File an Application for a New License

March 16, 1989

Take notice that on December 30, 1988, Central Maine Power Company, the existing licensee for the Wyman Hydroelectric Project No. 2329, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. The original license for Project No. 2329 was issued effective May 1, 1954, and expires December 31, 1993.

The project is located on the Kennebec River in Somerset County, Maine. The principal works of the Wyman Project include a 160-foot-high, 2,640-foot-long earth dam with a concrete core wall, a 430-foot-long concrete overflow section with a log sluice, a 168-foot-long concrete intake section, and a 160-foot-high, 772-foot-long reinforced concrete retaining wall parallel to the river course; a 14.4-mile-long reservoir at elevation 485 feet USGS Datum; a powerhouse with an installed capacity of 72,000 kW; a 7,500-foot-long tailrace; a substation and circuit connections to a switching station; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Edison Drive, Augusta, ME 04336.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–6744 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2411, Virginia]

Dan River, Inc.; Intent to File an Application for a New License

March 17, 1989.

Take notice that on December 29, 1988, Dan River, Inc., the existing licensee for the Schoolfield Hydroelectric Project No. 2411, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2411 was issued effective January 1, 1964, and expires December 31, 1993.

The project is located on the Dan River in the City of Danville, Virginia (no county). The principal works of the Schoolfield Project include a 25-foot-high concrete dam consisting of an ogee spillway about 910 feet long topped by 3-foot-high flashboards; 1 67-foot-long fishway with a sluicing structure; a reservoir of about 600 acres at elevation 435 feet m.s.l.; a powerhouse with an installed capacity of 4,550 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at the Main Office Building, Office Road, Danville, VA 24541.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–6741 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–50–001]

Florida Gas Transmission Co. Proposed Changes in FERC Gas Tariff

March 17, 1989.

Take notice that on March 13, 1989, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective July 13, 1989:

First Revised Volume No. 1

Substitute 38th Revised Sheet No. 8
Substitute Original Sheet No. 8A
Substitute Original Sheet No. 8B
Substitute 4th Revised Sheet No. 41
Substitute 5th Revised Sheet No. 44
Substitute 3rd Revised Sheet No. 45

Original Volume No. 2

Substitute 60th Revised Sheet No. 128

FGT states that the tariff sheets are being filed in compliance with the Commission's order dated February 10, 1989 to reflect the following: (1) The elimination of the adjustment to rate

base for the FERC annual charge and the resultant impact on the overall cost of service; (2) the elimination of the Entitlement Charge for Rate Schedule I and Rate Schedule PIT-1; and (3) to delete the provision from the tariff that would permit FGT to recover through its PGA mechanism a portion of the fixed charge allocation of take-or-pay costs flowed through by FGT's upstream-supplier, Southern Natural Gas Company and certain other modifications to ensure that FGT's Purchased Gas Adjustment Clause is consistent with the unit-of-sales methodology election pursuant to § 154.310(d) in this proceeding.

FGT states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation services under its FERC Gas Tariff, to its affected direct sales customers and to interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Rate, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before March 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6736 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2336, Georgia]

Georgia Power Co.; Intent to File an Application for a New License

March 17, 1989.

Take notice that on December 30, 1988, Georgia Power Company, the existing licensee for the Lloyd Shoals Hydroelectric Project No. 2336, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2336 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Ocmulgee River in Butts, Jasper, and Newton Counties, Georgia. The principal works of the Lloyd Shoals Project include a dam with a 728-foot-long spillway section, a 198-foot-long intake section, a 143-foot-long nonoverflow section, and an earth embankment; a reservoir of 4,850 acres at elevation 530 feet m.s.l.; a powerhouse with an installed capacity of 14,400 kW; 2.3/7.2/12 kVA transformers with transmission line connections: and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 333 Piedmont Avenue, 18th Floor, Atlanta, GA 30308.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6742 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ89-4-4-000 and TM89-5-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

March 16, 1989.

Take notice that on March 13, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 containing changes in rates and other tariff provisions for effectiveness on January 1, 1989, February 1, 1989 and April 1, 1989, as indicated below:

Purchased Gas Cost Adjustment for effectiveness April 1, 1989

First Revised Volume No. 1

Twenty-Fifth Revised Sheet No. 7

Tracking Adjustments

For effectiveness January 1, 1989

First Revised Volume No. 1

Third Substitute Seventeenth Revised Sheet No. 8

Original Volume No. 2

Substitute Eighth Revised Sheet No. 17
Substitute Tenth Revised Sheet No. 27

Tracking Adjustments

For effectiveness February 1, 1989

First Revised Volume No. 1

Substitute Ninth Revised Sheet No. 7-A
Substitute Eighteenth Revised Sheet No. 8

Original Volume No. 2

Substitute Ninth Revised Sheet No. 17
Substitute Eleventh Revised Sheet No. 27
Substitute First Revised Sheet No. 34
Substitute Second Revised Sheet No. 36

According to Granite State, the revised rates and other tariff changes are applicable to jurisdictional services rendered to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc. It is said that the revised tariff sheets reflect (1) Granite State's purchased gas costs for the second quarter of 1989 based on projections of purchase costs for the three months beginning April 1, 1989; and (2) revisions in transportation costs incurred by Granite State for transportation services rendered by Tennessee Gas Pipeline Company (Tennessee) that Granite State is authorized to track. It is further said that Tennessee recently filed revisions in the transportation charges in compliance filings submitted on February 23, 1989, in Docket No. RP88-228 and on March 7, 1989, in Docket Nos. RP82-121, *et al.*

According to Granite State copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6720 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-116-003]

Louisiana-Nevada Transit Co.;

Filing March 17, 1989.

Take notice that on March 13, 1989, Louisiana-Nevada Transit Company (LNT) filed certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1.

LNT states that these tariff sheets were originally submitted as an attachment to the Stipulation and Agreement in Support of Settlement. LNT states that, by Letter Order dated February 22, 1989, the Commission accepted the settlement and tariff sheets to become effective on the dates shown in the appendix to that Order. LNT states that the tariff sheets submitted in this filing have been completed to reflect the approved effective dates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 C.F.R. 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before March 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6737 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-333-000]

Murphy Oil USA, Inc.; Application for a Blanket Certificate with Pregranted Abandonment

March 17, 1989.

Take notice that on March 6, 1989, Murphy Oil USA, Inc. (Murphy) of 200 Peach Street, El Dorado, Arkansas 71730, 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 to authorize sales of previously uncommitted gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 3, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211,385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Murphy to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6746 Filed 3-21-89; 8:45am]

BILLING CODE 6717-01-M

[Docket No. TM89-3-16-002]

National Fuel Gas Supply Corp.; Filing

March 17, 1989.

Take notice that on March 13, 1989, National Fuel Gas Supply Corporation (National) filed Second Substitute Fifth Revised Sheet No. 72 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective March 1, 1989.

National states that this filing supplements its February 24, 1989 filing in order to remove an inadvertent adjustment to the Monthly Principal Amount associated with the pass-through of take-or-pay costs incurred by Texas Eastern Transmission Corporation from Southern Natural Gas Company. National states that this filing also restores the Monthly Principal Amount to the levels stated in its February 24, 1989 filing.

National states that copies of this filing have been mailed to all of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before March 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6748 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-27-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

March 15, 1989.

Take notice that North Penn Gas Company (North Penn) on March 10, 1989, pursuant to the Commission Order of December 20, 1988 and section 17 of the General Terms and Conditions of North Penn's FERC Gas Tariff, filed the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

First Revised Sheet No. 15H.
First Revised Sheet Nos. 15H(1) & 15H(2).
First Revised Sheet No. 15H(3).
Original Sheet No. 15H(4).
Alternate Original Sheet No. 15H(4).
Original Sheet No. 15H(5).

North Penn states these tariff sheets are to be effective 4/1/89 and establish procedures by which North Penn will recover from its customers Commission-approved Take-or-Pay charges which North Penn's pipeline suppliers bill North Penn. These tariff sheets also make changes to existing tariff sheets to reflect changes in the amount of Take-or-Pay billed to North Penn by its pipeline suppliers.

The tariff sheets in which North Penn proposes specific pass-throughs of these charges are as follows:

1. First Revised Sheet Nos. 15H(2) and 15H(3)

These sheets are filed pursuant to the Commission's August 1, 1988 Order in *North Penn Gas Company*, Docket No. RP88-190. Their sole purpose is to reflect revisions to Order 500 direct bill charges that the Commission recently authorized Tennessee Gas Pipeline Company (Tennessee) and Transcontinental Gas Pipe Line Corporation (Transco) to implement in Docket Nos. RP88-191 et al. and RP88-68, et al.

North Penn notes it has a rehearing request pending on the August 1 Order in which North Penn requests the Commission to allow North Penn to recover the Transco and Tennessee Order 500 costs from Corning Natural Gas Corporation (Corning), a former sales customer or North Penn. First Revised Sheet Nos. 15H(2) and 15H(3) follow the allocation method prescribed by the Commission in the August 1 Order. North Penn files these sheets on the explicit condition that they may be revised to reflect the appropriate allocation should North Penn subsequently prevail and be authorized to recover Corning-related costs from Corning.

2. Original Sheet 15H(4) and Alternative Original Sheet 15H(4)

These sheets propose to pass-through the Take-or-Pay costs North Penn has incurred from Tennessee by virtue of the July 25, 1986 Commission-approved settlement in *Tennessee*, Docket No. RP85–178. Both Original and Alternate Sheet 15H(4) propose an "as-billed" treatment for the pass-through of the RP85–178 costs. Original Sheet 15H(4), which is North Penn's primary proposal, reflects the allocation of such costs to all FERC customers, including Corning.

In the event the Commission rejects that sheet, North Penn has filed Alternate Sheet 15H(4) that eliminates Corning from the FERC jurisdictional allocation North Penn has filed the Original Sheet No. 15H(4) to preserve its rights to appeal a Commission decision not to allow North Penn to recover costs from Corning.

3. Original Sheet No. 15H(5)

This sheet proposes to pass-through, on an as-billed basis, Order 500 and Take-or-Pay costs that CNG Transmission Corporation (CNG) has charged North Penn pursuant to Commission authorization provided in Docket No. RP88–217, Sec. 45 FERC ¶61,223 (1988) and 45 FERC ¶61,299 (1988). North Penn notes in this regard that there's no need to file alternate tariff sheets as the Commission has correctly proposed in the above-referenced order the need to require Corning to pay its share of Take-or-Pay costs that North Penn would otherwise pay CNG. North Penn also notes that it has used one amortization period of thirty-six months for billing its customers the CNG Take-or-Pay costs. In contrast, CNG has used multiple amortization periods to pass-through such costs varying from one to forty-three months. The 36-month period North Penn has proposed eliminates the complexity of mirroring several amortization periods and thereby eliminates administrative costs. The proposed 36-month period also results in a lesser charge to the FERC jurisdictional customers.

As noted, the allocation procedures proposed by North Penn reflect an as-billed principle as demonstrated in detail in Appendices A, B, Alternate B and C. All refunds or additional charges will be allocated to North Penn's FERC customers in the same manner as shown in this filing, except if subsequent orders mandate different allocations pursuant to which North Penn incurs these costs. In that event, North Penn will also revise its tariff sheets to reflect an appropriate pass-through of such costs or refunds.

Copies of this filing were served upon North Penn's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before March 22, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–6749 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–106–000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 16, 1989

Take notice that on March 13, 1989, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following original and revised tariff sheets:

Fourth Revised Sheet No. 106.
First Revised Sheet No. 211.
Original Sheet No. 212.
First Revised Sheet Nos. 235 through 238.
Original Sheet No. 238a.

Northern Border states these tariff sheets are in response to the Commission's December 30, 1988 order in Docket No. RP89–18–000 and the January 24, 1989 order in a United Gas Pipe Line Company (United) proceeding at Docket No. CP88–6–001, *et al.* wherein United, and other upstream interstate pipelines on which United has contracts for firm capacity, were authorized amendments to certificates to permit United to broker its firm capacity. Northern Border submits that under its current tariff it would be unfair to the other firm Shippers on its system, transporting pursuant to Rate Schedule T–1, for any T–1 Shipper having an effective capacity brokering program to share in revenue credits generated by Northern Border's efforts under Rate Schedule IT–1. Due to the competitive advantage a T–1 Shipper would have under a capacity brokering program to provide interruptible service by utilizing its firm capacity rights, Northern Border submits that these tariff sheets provide a fair and equitable distribution of revenue credits that may be generated by Northern Border after a T–1 Shipper has exercised its unique opportunity to market interruptible service under a capacity brokering program. Northern Border has requested that these tariff sheets be effective no later than the date United's tariff sheets to implement its capacity brokering program become effective. Copies of this filing have been sent to all Rate Schedule T–1 Shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.11, 385.213). All such motions protests should be filed on or before 3/24/89. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 89–6721 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP–88–227–012]

Paiute Pipeline Co.; Proposed Revised Tariff Sheet

March 16, 1989

Take notice that on March 13, 1989, Paiute Pipeline Company (Paiute), pursuant to Part 154 of the Commission's

Regulations under the Natural Gas Act, tendered for filing First Revised Sheet No. 69 applicable to its FERC Gas Tariff, Original Volume No. 1–A. Paiute states that the purpose of its filing is to comply with the Commission's order issued October 28, 1988 in Docket Nos. RP88–227–000, *et al.*, and the Commission's order issued February 24, 1989 in Docket Nos. RP88–227–004 and RP88–227–007, by which the Commission directed Paiute to revise section 11, Interruptions of Service of the General Terms and Conditions of its transportation tariff to be consistent with similar changes that the Commission had previously required to be made to section 12 of the General Terms and Conditions of Paiute's sales tariff.

Paiute requests that the proposed tariff sheet be permitted to become effective November 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–6722 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–227–011]

Paiute Pipeline Co.; Change in FERC Gas Tariff

March 16, 1989.

Take notice that on March 13, 1989, Paiute Pipeline Company (Paiute) tendered for filing various tariff sheets proposed to be effective February 1, 1989. Paiute states that on January 31, 1989, Paiute, in accordance with section 4(e) of the Natural Gas Act and § 154.67(a) of the Commission's Regulations, moved to place into effect on February 1, 1989 certain rates and tariff sheets which were suspended by previous Commission orders issued in Docket No. RP88–227. However, by order issued March 2, 1989, the Commission rejected the rates and tariff sheets that were the subject of Paiute's January 31, 1989 motion filing.

Paiute states that on February 10, 1989, tariff sheets were submitted in compliance with a Commission order issued January 31, 1989 in this proceeding. In such filing, Paiute submitted three alternative approaches.

Paiute further states that in light of the Commission's rejection in the March 2, 1989 order, and the fact that the Commission has not yet acted upon Paiute's February 10 filing, Paiute remains uncertain as to precisely what rates will meet the Commission's directives. In an attempt to cut through the dilemma facing it, Paiute has submitted proposed tariff sheets which it believes comport with the Commission's desired approach, but which differ from Paiute's preferred approach, since Paiute will be placed at risk under such tariff sheets for a potential underrecovery of costs that may be recognized as appropriate in the underlying rate proceeding. However, Paiute states that due to the need to place rates into effect in order to bill for services rendered during February, 1989, Paiute is willing to use the rates reflected in its proposed tariff sheets, so long as Paiute is able to revise its rates effective February 1, 1989 to reflect the final Commission action regarding which of the three alternative approaches discussed in Paiute's February 10 filing is appropriate.

Paiute states the rates contained in its filing reflects an adjustment to rate base to exclude plant costs that were included in the original rate filing where the related facilities were not in service as of February 1, 1989. The rates further reflect the assumption that Paiute's sales customers would opt to convert 15 percent of their sales entitlement to firm transportation. Paiute's filing also proposes seasonal rates for its firm service rate schedules.

Paiute states that as a result of orders issued by the Commission in this proceeding on August 31, 1988 and January 31, 1989, Paiute's customers have now twice submitted D–2 volume nominations to Paiute in the course of this proceeding. The primary tariff sheets (Tab A) referenced in Paiute's filing reflects the use of its customers' first round of D–2 nominations. Under the Commission's January 31, 1989 order, Paiute has until March 17, 1989 to submit a filing reflecting the most recent round of D–2 nominations. However, Paiute submitted in its filing alternative tariff sheets (Tab B) which reflect the new D–2 nominations. Such tariff sheets differ from the primary sheets only in reflecting the new D–2 nominations and the results which flow directly from changes therein. Paiute states that should the Commission deem it appropriate to use the new D–2 nominations in lieu of the previous nominations, Paiute has requested that the Commission permit the alternative tariff sheets to be put into effect as of February 1, 1989.

Paiute requests expeditious action on its filing inasmuch as Paiute's FERC Gas Tariff, Original Volume Nos. 1 and 1–A, contains provisions directing that it render bills by the 15th of the month following services in order that its customers will remit payment by the 25th of such month.

Paiute states that copies of this filing have been mailed to all parties of record and interested state commissions in the above captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426 in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–6723 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–78–001]

Panhandle Eastern Pipe Line Co.; Change in Tariff

March 16, 1989.

Take notice that on March 13, 1989 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing, in compliance with 284.305(e) of the Commission's Regulations and the Commission's Order dated March 1, 1989 granting an extension of time, the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

First Substitute First Revised Sheet No. 32–BT

The proposed effective date of this revised tariff sheet is April 1, 1989.

In accordance with the provisions of the Commission's Regulations, Panhandle states that this tariff sheet

reflects the modification of its Rate Schedule for open access firm transportation service under 18 CFR Part 284, § 284.304(c) of the Commission's Regulations.

Panhandle also respectively requests that the Commission grant such waivers of the applicable requirements of the Natural Gas Act and the Commission's Regulations thereunder so that the enclosed tariff sheets may be accepted for filing and made effective on April 1, 1989.

Copies of this letter and enclosures are being served on affected jurisdictional customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Regulations. All such motions or protests should be filed on or before March 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6724 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-969-000]

Questar Pipeline Co.; Application

March 16, 1989.

Take notice that on March 9, 1989, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP89-969-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service provided to Natural Gas Pipeline Company of America (NGPL) and the option to purchase gas from NGPL under Rate Schedule X-21, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar (formerly Mountain Fuel Resources, Inc.) states that it entered into a gas purchase and transportation agreement on October 3, 1978, as amended, with NGPL. Questar states further that by letter dated May 31, 1988, NGPL gave notice of its intent to terminate the 1978 agreement.

It is said that the rate impact resulting from the requested abandonment has been reflected in Questar's pending rate case in Docket No. RP88-93-000 *et al.*

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6745 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-328-001]

Ringwood Gas Marketing Co. Application for Extension of a Blanket Limited-Term Certificate with Pregranted Abandonment

March 16, 1989.

Take notice that on March 13, 1989, Ringwood Gas Marketing Company (Ringwood) of 4828 Loop Central Drive, Suite 850, Houston, Texas 77081, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Ringwood to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6747 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-101-000]

Trunkline Gas Co.; Change in Tariff

March 16, 1989.

Take notice that on March 13, 1989 Trunkline Gas Company (Trunkline) tendered for filing, in compliance with § 284.305(e) of the Commission's Regulations and the Commission's Order dated March 1, 1989 granting an extension of time, the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 9-DE
Second Revised Sheet No. 9-DF
Original Sheet No. 9-DF.1

The proposed effective date of these revised tariff sheets is April 1, 1989.

In accordance with the provisions of the Commission's Regulations,

Trunkline states that these tariff sheets reflect the modification of its Rate Schedule for open access firm transportation service under 18 CFR Part 284, § 284.304(c) of the Commission's Regulations.

Trunkline also respectfully requests that the Commission grant such waivers of the applicable requirements of the Natural Gas Act and the Commission's Regulations thereunder so that the enclosed tariff sheets may be accepted for filing and made effective on April 1, 1989.

Copies of this letter and enclosures are being served on affected jurisdictional customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Regulations. All such motions or protests should be filed on or before March 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6725 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-6-003 and CP82-50-012]

United Gas Pipe Line Co. and Natural Gas Pipeline Co. of America; Change in FERC Gas Tariff

March 16, 1989.

Take notice that on March 1, 1989, Natural Gas Pipeline Company of America (Natural) submitted for filing its First Revised Sheet No. 1830 to be part of its FERC Gas Tariff, Second Revised Volume No. 2, to be effective July 1, 1989.

Natural states that this tariff sheet has been submitted in accordance with ordering Paragraph (B) of the Commission's Order Amending (the) Blanket Certificate of United Gas Pipe Line Company (United) issued January 24, 1989 in Docket Nos. CP88-6-001 and RP88-8-007 (January 24th Order). Natural states that the January 24th Order authorized the amendment in Docket No. CP82-50 of Natural's Rate Schedule X-130 to allow United's firm transportation rights on Natural's system to be bought and sold.

Natural respectfully requested waiver of the Commission's Regulations to the extent necessary to allow its First Revised Sheet No. 1830 to become effective on July 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before March 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 89-6726 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2283 Maine]

Central Maine Power Co.; Intent To File an Application for a New License

March 17, 1989

Take notice that on December 30, 1988, Central Maine Power Company, the existing licensee for the Gulf Island-Deer Rips Hydroelectric Project No. 2283, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2283 was issued effective July 1, 1958, and expires December 31, 1993.

The project is located on the Androscoggin River in Androscoggin County, Maine. The principal works of the Gulf Island-Deer Rips Project include two developments with installed capacities: Gulf Island, with a concrete and earthfill dam, a reservoir of 4,000 acres at elevation 262 feet USGS Datum, and a 19,200-kW powerhouse; Deer Rips, with a concrete dam, a reservoir of 130 acres at elevation 205.7 feet USGS Datum, a 600-foot-long canal on the right bank to the 6,440-kW Deer Rips powerhouse, and a forebay on the left bank to the 3,600-kW Androscoggin No. 3 powerhouse; transmission line connections; and appurtenances.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE; Washington, DC 20426. The above information as described in the rule is now available from the licensee at Edison Drive, Augusta, ME 04336.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-6731 Filed 3-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2318 New York]

Niagara Mohawk Power Corp.; Intent To File an Application for a New License

March 17, 1989

Take notice that on December 29, 1988, Niagara Mohawk Power Corporation, the existing licensee for the E.J. West Hydroelectric Project No. 2318, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2318 was issued effective April 1, 1949, and expires December 31, 1993.

The project is located on the Sacandaga River in Saratoga County, New York. The principal works of E.J. West Project included a gated intake structure located at the downstream end of the spillway from the Conklingville Dam of the State of New York; two concrete penstocks, 600 feet long; a powerhouse with an installed capacity of 20,000 kW; a tailrace returning flow to the river, transmission line connections; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issues April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 300 Erie Boulevard West, Building A-

1, Syracuse, NY 13202, Attn: Barbara J. Raymond, C.R.M., telephone (315) 428–6353.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for licenses for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–6732 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI88–490–001]

Texcol Gas Services, Inc.; Application for Extension of a Blanket Limited-Term Certificate with Pregranted Abandonment

March 16, 1989

Take notice that on March 7, 1989, Texcol Gas Services, Inc. (Texcol) of Coastal Tower, 9 Greenway Plaza, Houston, Texas 77046 has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .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 Texcol to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89–6733 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER89–211–000]

Florida Power Corp.; Filing

March 15, 1989.

Take notice that on March 10, 1989 Florida Power Corporation and Duke Power Company, the parties to the contract under review in this proceeding tendered for filing a Certificate of Concurrence, as requested by Commission Staff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–6774 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–997–000]

Natural Gas Pipeline Company of America; Request Under Blanket Authorization

March 15, 1989.

Take notice that on March 13, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–997–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for OXY NGL Inc. (OXY), a gas processor/gatherer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated January 13, 1989, under its Rate Schedule ITS, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for OXY. Natural states that it would transport the gas from receipt points in New Mexico and Texas, and deliver such gas to delivery points located in New Mexico.

Natural advises that service under § 284.223(a) commenced January 22, 1989, as reported in Docket No. ST89–2639–000. Natural further advises that it would transport 3,000 MMBtu on an average day and 1,095,000 MMBtu annually.

Any person or the Commission's staff may, within 45 days after 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. 89–6775 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–262–000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

March 15, 1989.

Take notice that an informal settlement conference will be convened in the above proceeding on Thursday, March 30, 1989, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regualtions (18 CFR 385.214).

For additional information, contact John J. Keating, (202) 357–5762 or Joseph Karger, (202) 357–8570.

Lois D. Cashell,

Secretary.

[FR Doc. 89–6776 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7423–002–Utah]

Salt Lake City Corp.; Surrender of Exemption From Licensing

March 16, 1989.

Take notice that Salt Lake City Corporation, exemptee for the proposed Parley's Conduit Pressure Regulation Station Project No. 7423, requested by letter filed March 23, 1987, that its exemption be terminated. The exemptee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The exeption for Project No. 7423 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 89–6777 Filed 3–21–89; 8:45am]

BILLING CODE 6717–01–M

[Docket No. ER84–560–009]

Union Electric Co.; Filing

March 15, 1989.

Take notice that on February 15, 1989, Union Electric Company tendered for filing its compliance filing pursuant to the Commission's Opinion No. 279.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 89–6778 Filed 3–21–89; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Tampa Port Authority Terminal

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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 protests or 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 and protests are found in § 560.7 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 227–200227

Title: Tampa Port Authority Terminal Agreement

Parties: Tampa Port Authority Garrison Stevedoring, Inc. (Garrison)

Synopsis: The Agreement is an incentive transshipment agreement between the parties wherein Garrison agrees to discharge 8,000 tons of potassium nitrate per year in bagged or bulk form. In consideration of the guaranteed tonnage, the Authority will grant Garrison wharfage rate consideration wherein cargoes transshipped within 120 days after discharge will not be charged wharfage on the outbound movement, wharfage will only be assessed on the inbound movement.

Filing Party: Mr. H.E. Welch, Director of Traffic, Tampa Port Authority, P.O. Box 2192, 811 Wynkoop Road, Tampa, Florida 33601.

By Order of the Federal Maritime Commission.

Dated: March 17, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–6771 Filed 3–21–89, 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Port of San Francisco Terminal

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010631.001.

Title: Port of Oakland Terminal Agreement.

Parties: Port of Oakland (Port) Hanjin Shipping Company, Ltd. (Hanjin).

Synopsis: The agreement provides for Hanjin to become successor to Korea Shipping Corporation, Ltd. (KSC) with respect to certain Port facilities located at the Seventh Street Public Container Terminal by reason of the merger of KSC and Hanjin Container Lines, Ltd. (HCL). It also extends the term of the basic agreement (Agreement No. 224–010631) to April 30, 1990 and terminates Agreement No. 224–010735 between the Port and HCL.

Agreement No.: 224–200228.

Title: Port of San Francisco Terminal Agreement.

Parties: San Francisco Port Commission CIA Argentina De Transportes Maritimos (CIAMAR).

Synopsis: The Agreement provides that in consideration of CIAMAR using the Port of San Francisco as its Northern California port of call, CIAMAR will pay reduced dockage and wharfage rates. The term of the agreement is for five years.

By Order of the Federal Maritime Commission.

Dated: March 17, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-6772 Filed 3-21-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Fees for Federal Reserve; Returned Check Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of new fee schedules for Federal Reserve returned check services.

SUMMARY: The Board has approved new fees for the Federal Reserve Banks' returned check services in response to declining check recovery rates in the last four months of 1988. The revised fees should allow the Federal Reserve to achieve full cost recovery for total check services in 1989.

EFFECTIVE DATE: New fees are effective May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Gayle Thompson, Program Leader (202/452-2934), or Nalini T. Rogers, Senior Analyst (202/452-3801), Division of Federal Reserve Bank Operations; for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

In May 1988, the Board authorized Federal Reserve Banks to provide new returned check services in order to expedite the return of unpaid checks, as required by Regulation CC, which implements the Expedited Funds Availability Act ("EFA") (53 FR 19490, May 27, 1988). The Board approved prices for these new services in June 1988 and, at the same time, reduced forward collection fees (53 FR 24148, June 27, 1988). The new fees and services became effective September 1, 1988. Prior to September 1988, the Federal Reserve Banks did not price returned checks explicitly but incorporated the cost of handling returned checks into their forward collection fees.

The new Federal Reserve returned check services differ significantly from the return services provided by the Reserve Banks prior to the implementation of EFA. Reserve Banks now accept and process any returned check, and return checks directly to the depositary bank. In contrast, prior to September 1, 1988, a Federal Reserve Bank accepted and processed only those returned checks it collected, and returned each check to the institution that deposited the check with the Federal Reserve for forward collection.

Reserve Banks also accelerated their handling of returned checks by processing returns of local checks on an overnight basis and by dispatching them the morning following receipt. Nonlocal raw returns [1] are qualified for automated processing prior to dispatch to the second Federal Reserve office on the evening following receipt. Nonlocal returns deposited in qualified form are dispatched to the second Federal Reserve office on the night of receipt or the following night. Previously, Reserve Banks processed local returns during the day and dispatched them the following morning. Nonlocal returns were processed manually by two Reserve Bank offices, lengthening the return process by one day.

The Federal Reserve adopted its returned check prices before the Reserve Banks had experience with the new returned check procedures. The new fees were based on Reserve Bank estimates of the costs of providing these services and the revenue that would be received. Revenue projections were particularly dependent on the estimated proportion of returned checks that would be received by the Reserve Banks as either raw, qualified, or fine sort deposits. When it approved the new check prices, which were to be effective through 1989, the Board indicated that it would review the prices in the spring of 1989 to determine whether earlier adjustments to the fees for these services were warranted.

Experience in late 1988 indicated that most Reserve Banks were receiving lower revenues than had been anticipated and that actual returned check costs exceeded estimates. This experience is reflected in the decline in check service cost recovery from 101 percent for the first eight months of 1988, prior to the implementation of EFA and the new return services, to approximately 93 percent for the last four months of the year.

The lower than anticipated returned check revenue is primarily due to a greater than expected proportion of deposits received in qualified form than in raw form. Because qualified prices are lower than raw prices, Reserve Banks are receiving less revenue than projected.

The primary cause of the higher than anticipated costs is the poor quality of incoming returned check deposits. Even though most returns are being deposited in qualified form, the low quality of many of those deposits results in significant costs for Reserve Banks. Poor physical quality of the returns, improper packaging, and noncompliance with the indorsement standard, along with high returned check adjustment levels, have forced Reserve Banks to devote additional resources to return processing. Reserve Banks have worked with depository institutions to improve the quality of return deposits and have also devoted considerable attention to improving returned check operations. Although the industry has been very cooperative and quality has improved since the implementation of the new return services, problems persist.

Quality Improvement Initiatives

Reserve Banks are addressing returned check quality issues in a coordinated fashion Systemwide, with the objective of achieving the same high quality for returned check processing as for the processing of forward collection checks. Several major initiatives are currently underway in the Federal Reserve System that are expected to improve return operations. These initiatives include improving carrier envelope document quality, reducing the number of misdirected qualified returned checks, improving indorsement quality, and reducing the reject rate of qualified deposits.

Variations in the quality of carrier envelopes used in the QRC process result in serious problems with envelopes that jam check equipment or that cannot be properly indorsed or microfilmed. Federal Reserve guidelines for carrier envelope document quality are being finalized for release during the second quarter of 1989. These guidelines will provide carrier envelope characteristics that will increase the likelihood that a carrier can be processed on high-speed check equipment without operational difficulties. In addition, the American National Standards Institute has agreed to develop long-term carrier envelope specification standards.

The Reserve Banks are also counselling institutions that encode returns to the incorrect institution, thus causing the returns to be misdirected. This problem slows the return of the check to the depositary bank and adds significantly to Reserve Bank and depository institution adjustment cases.

[1] A raw returned check is a return that has not been prepared for automated processing. A qualified returned check ("QRC") is a return that has been prepared for automated processing by placing a strip on the check, or placing the check in a carrier envelope, and encoding the strip or envelope with the routing number of the depositary bank, the amount of the check, and a special return identifier.

Alerting those institutions that create this problem and advising them on how to qualify returned checks properly should result in a decline in the number of misdirected qualified returns.

The major underlying quality problem that results in misdirected QRCs and returns for which the depositary bank cannot be identified is the lack of adherence by the depositary bank to the Regulation CC indorsement standard. Unreadable indorsements caused the misrouting and delay of returned checks, thereby precluding the expenditious return of these checks. To facilitate compliance with the indorsement standard, each Federal Reserve office has efforts underway to determine the major indorsement problems in its region and to work directly with institutions and equipment vendors to improve indorsement quality. In addition, the Federal Reserve is actively investigating alternative, more efficient indorsement processes, such as machine-readable indorsements using bar-code technology, that would automate the process of reading indorsements and decrease the likelihood of incorrectly reading the indorsement.

The poor quality of many qualified returned checks causes them to reject when processed on automated check equipment. The Reserve Banks have established QRC reject rate policies to improve the quality of deposits. Most Reserve Banks have notified their depository institutions that, beginning February 1, 1989, qualified return letters that have reject rates above a certain percent will be treated as raw returns and be charged the raw, rather than the qualified, price, with availability on those items to be deferred by one day. The reject rate threshold in most Districts is 15 percent. The majority of returned check cash letters have reject rates well below 15 percent; therefore, this threshold will affect only the relatively few institutions whose dposits create the most significant operational problems. Reserve Banks will review their threshold rates periodically and lower them as the overall quality of qualified return deposits improves. Institutions that are depositing poor quality QRC cash letters are being counseled by their local Federal Reserve Bank on the specific problems with their cash letters so that they can take the necessary actions to improve the quality of their deposits.

Discussion

Despite ongoing efforts to improve the quality of incoming returned check deposits, revised 1989 cost and revenue estimates, based on the fees in effect as of September 1, 1988, indicate that total check costs are expected to exceed anticipated revenues. As of January 1989, Reserve banks projected a Systemwide 1989 cost recovery rate of 98.6 percent in the check collection and return service. This figure is significantly below the budgeted cost recovery rate of 103.4 percent. Based on the revised low recovery rate estimate and the experience of higher returned check costs, the Board concluded that the System should reprice its returned check services as of May 1989, with the new prices to remain in effect at least until December 31, 1989. Returned check prices will be reviewed again in the fall as part of the annual repricing of all Federal Reserve Bank services, with any fee adjustments to take effect on January 1, 1990.

The adjustments to Federal Reserve returned check prices reflect returned check costs more accurately, by recovering, at a minimum, Federal Reserve floor costs (i.e., direct and support costs). Based on revised returned check prices, the Federal Reserve anticipates recovering total check costs during the time that the new prices are in effect, i.e., May through December 1989. The new prices reflect anticipated cost reductions resulting from future quality improvements.

The estimated total check cost recovery after the returned check fee changes is 102.9 percent for the period May-December 1989, and 100.5 percent for the year. The total cost for the check service in 1989, including the private sector adjustment factor, is projected to be $540.9 million. Total revenue is estimated to be $543.5 million. There are a total of 730 returned check products, and of this total, 633 prices have increased and 97 remain unchanged. the new raw return fees are an average of $0.19 more than current fees, bringing the System average price to $0.72. The new qualified return prices increase current fees an average of $0.14, resulting in a new System average price of $0.212. These fee changes increase the spread between the System average raw and qualified prices from $0.46 to $0.51. Four districts have increased their return fine sort fees an average of $0.0022, to reflect the higher adjustment costs associated with fine sort returns.

Although the Reserve Banks expect aggregate return volume to be stable, they project considerable movement among products based on past volume trends and the effects of the proposed price changes. Reserve Banks estimate that the Federal Reserve will handle 228 million returned checks in 1989. They project that 76 percent of the returns will be qualifed prior to deposit with the Reserve Bank, 22 percent deposited as raw returns, and 2 percent deposited as fine sort deposits (in contrast to earlier budget estimates of 55 percent, 44 percent, and 1 percent, respectively). Reserve Banks that will have relatively high qualified prices expect an increase in fine sort volume. Reserve Banks that have increased significantly the spread between raw and qualified prices project an increase in qualified deposits. A wider price spread between raw and qualifed return prices encourages institutions to deposit their returned checks in qualified form, which expedites the return process, and also provides greater incentives to correspondent banks to offer returned check services in which they accept raw returned checks, deliver some returns directly to the depositary bank, and qualify other returns for delivery through a Reserve Bank.

Copies of the new fee schedules for the Federal Reserve returned check service are available from local Federal Reserve Banks.

By order of the Board of Governors of the Federal Reserve System, March 16, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-6638 Filed 3-21-89; 8:45am]

BILLING CODE 6210-01-M

Acadia State Bancshares, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing much include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that 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 April 12, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Acadia State Bancshares, Inc.*, Baton Rouge, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Acadia State Bank, Baton Rouge, Louisiana, which will be successor by merger with Catahoula Bank, Jonesville, Louisiana, and LaSalle State Bank, Jena, Louisiana.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Citizens Bancshares, Inc.*, Bozeman, Montana; to become a bank holding company by acquiring at least 80 percent of the voting shares of First Citizens Bank of Bozeman, Bozeman, Montana.

Board of Governors of the Federal Reserve System, March 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-6639 Filed 3-21-89; 8:45 am]

BILLING CODE 6210-01-M

Thurman State Corp.; Application To Engage de Novo in PermissibleNonbanking Activities

The company listed in this notice has 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.

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 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *Thurman State Corporation*, Lincoln, Nebraska; to engage *de novo* in insurance activities in small towns pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the communities of Bedford and Sidney, Iowa.

Board of Governors of the Federal Reserve System, March 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-6640 Filed 3-21-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

Name: Control of Methylene Chloride in Furniture Stripping.

Date: April 27, 1989.

Place: Conference Room C, Alice Hamilton Laboratory, 5555 Ridge Avenue, Cincinnati, OH 45213.

Time: 9:00 a.m.—12:00 noon.

Status: Open to the public, limited only by space available.

Purpose: To conduct an open meeting for the review of a project entitled: "Control of Methylene Chloride in Furniture Stripping." This project will evaluate control methods to reduce exposure to methylene chloride, identify the lowest feasible level of exposure, and investigate substitute materials of a less hazardous nature.

Additional information may be obtained from: Paul A. Jensen, Project Officer, Division of Physical Sciences and Engineering, NIOSH, 4676 Columbia Parkway, R-5, Cincinnati, Ohio 45226-1998, Telephone: Commercial: (513) 841-4221, FTS: 684-4221.

Dated: March 16, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-6658 Filed 3-21-89; 8:45 am]

BILLING CODE 4160-19-M

National Institute for Occupational Safety and Health Meeting; Defense Mechanisms of Alveolar Pneumocytes Against Occupational Agents Validation Studies of in Situ Assay System In Occupational Setting Respirable Genotoxic Particulate Exposure Measurement Monitoring

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), and will be open to the public for observation and participation, limited only by the space available:

Name: Defense Mechanisms of Alveolar Pneumocytes Against Occupational Agents.

Date: April 19, 1989.

Place: Appalachian Laboratory for Occupational Safety and Health, Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Time: 8:30 a.m.-10:30 a.m.

Purpose: To review the project entitled "Defense Mechanisms of Alveolar Pneumocytes Against Occupational Agents."

Additional information and copies of the research protocol may be obtained from: Vincent Castranova, Ph.D., and Nicholas Hahon, M.Sci., Division of Respiratory Disease Studies, HIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291-4591, FTS: 923-4591.

Name: Validation Studies of in SITU Assay System in Occupational Setting.

Date: April 19, 1989.

Place: Appalachian Laboratory for Occupational Safety and Health, Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Time: 10:30 a.m.-12:30 p.m.

Purpose: To review the project entitled "Validation Studies of InSitu Assay System in Occupational Setting."

Additional information and copies of the research protocol may be obtained from: Tong-man Ong, Ph.D., Division of

Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291–4516, FTS: 923–4516.

Name: Respirable Genotoxic Particulate Exposure Measurement Monitoring.

Date: April 19, 1989.

Place: Appalachian Laboratory for Occupational Safety and Health, Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Time: 2:00 p.m.–4:00 p.m.

Purpose: To review the project entitled "Respirable Genotoxic Particulate Exposure Measurement Monitoring."

Additional information and copies of the research protocol may be obtained from: William Wallace, Ph.D. and Tong-man Ong, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virgina 26505, Telephone: Commercial (304) 291–4136, FTS: 923–4136.

Viewpoint and suggestions from industry, organized labor, academia, other governmental agencies, and the public are invited.

Dated: March 16, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–6659 Filed 3–21–89; 8:45 am]

BILLING CODE 4160–19–M

National Institute For Occupational Safety And Health; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

Name: Progress Toward Eliminating Occupational Lead Poisoning.

Date: May 4, 1989.

Place: Division of Surveillance, Hazard Evaluations and Field Studies, NIOSH Alice Hamilton Laboratories, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Time: 8:00 a.m. - 5:00 p.m.

Status: Open to the public, limited only by space available.

Purpose: To review the protocol for the new NIOSH research project to evaluate the use of lead and the control of lead poisoning in Ohio establishments.

Additional information may be obtained from: Paul J. Seligman, M.D., Division of Surveillance, Hazard Evaluations and Field Studies, Mail Stop R21, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: Commerical: (513) 841–4353, FTS: 684–4353.

Dated: March 16, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–6660 Filed 3–21–89; 8:45 am]

BILLING CODE 4160–19–M

[Announcement Number 921]

For Expanded Initiatives and the Evaluation of Surveillance of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection; Availiability of Funds for Fiscal Year 1989

Introduction

The Centers for Disease Control (CDC) announces a program for competitive cooperative agreement applications to evaluate surviellance and develop alternative surveillance methods for AIDS and HIV infection. These include studies of: The spectrum of HIV-related disease, use of the National Death Index to evaluate the completeness of mortality reporting, use of computerized patient care records to assess the completeness of AIDS reporting, and collection of supplemental surveillance data.

Authority

These cooperative agreements are authorized under section 301(a) and 311 of the Public Health Service Act, as amended. Regulations are set forth in 42 CFR Part 52, entitled "Grants for Research Projects."

Eligible Applicants

Eligible applicants are official State and local public health agencies who are the current recipients of the HIV/AIDS Prevention and Surveillance cooperative agreements. In addition, applicants eligible for new awards are the Republic of the Marshall Islands and, in consultation with the State public health agency, the official local public health agency serving the majority of the population of any metropolitan statistical area which has reported more than 2,000 AIDS cases to CDC as of June 1, 1988.

Applications with Multiple Components

Applicants may submit applications with more than one component under this announcement. Each component, however, must be complete as it will be evaluated separately without reference to any other component.

Availability of Funds

Approximately $2.1 million will be available in Fiscal Year 1989 to fund approximately 15–20 new cooperative agreements. It is expected that the awards will range from $30,000 to $200,000. It is expected that the awards will begin on or about July 1, 1989, and usually will be for a 12 month budget period within a 1 to 3-year project period. Funding estimates may vary and are subject to change, depending upon the availability of funds. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of these awards is to assist State/local health departments in conducting alternative surveillance initiatives and in evaluating the surveillance of AIDS and HIV infections. Collaborative projects involving participating areas and CDC will allow coordinated data collection among participants to define the spectrum of HIV-related disease, assess the performance of the current AIDS surveillance system, define the contribution of HIV infection to mortality trends, and test alternative surveillance methods. To be useful at the State/local and national levels, the data among participants must be comparable. A series of surveillance projects are outlined in the complete program description (refer to section "Where to Obtain Additional Information"). For each project, participating areas must be willing to collaborate with other participants and CDC to insure comparable data collection methods and formats.

Program Requirements

A. Recipient Activities

With technical assistance from CDC and in collaboration with other participants, each participant will implement methods, techniques, and approaches for dealing with questions surrounding the surveillance of AIDS and HIV infection relevant to individual projects. Data collection procedures and forms will be developed so that core data items can be aggregated by CDC. In addition to core data items, participants may collect additional information specific to local needs. This data base must be of limited access to insure confidentiality of persons with AIDS or other manifestations of confirmed or suspected HIV infection. In addition to collaborating with CDC in the analysis

and presentation of core data items, participants would have lead responsibility for analysis and presentation of data collected for local purposes.

B. Centers for Disease Control Activities

CDC will assist the collaborator in conducting surveillance initiatives/evaluations related to AIDS and HIV infection. In addition to the financial support provided, CDC will provide assistance to the collaborator in the design and conduct of the projects, including technical guidance in the development of study protocols, data collection forms, training and pretesting methods, and the design of data management systems. In addition, for certain projects (spectrum of disease, National Death Index, supplement to routine AIDS case reporting), CDC will develop computer software for data management which will be compatible with the existing software for the AIDS Reporting System. CDC will provide coordination among participants for each project to insure comparability of core data items, and CDC will have lead responsibility for aggregation of data among sites and for analyses and presentation of aggregate findings.

Evaluation Criteria

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's abilities to meet the following criteria:

1. The quality of plans to develop and implement the initiative or evaluation study describing how potential sources of surveillance data will be identified, accessed, and used, including a plan to protect confidentiality. (30 points)

2. The ability to follow and/or analyze an adequate number of cases or infected individuals to assure proper conduct of the study. The known or projected prevalence of AIDS cases and HIV infection in the population to be studied will be an important area of consideration. (15 points)

3. The applicant's understanding of the objectives of the alternative surveillance initiative or evaluation and the applicant's ability, willingness and/or need to cooperate in a study with CDC and other participants. (15 points)

4. The applicant's current activities in the surveillance of AIDS, other HIV diseases, and asymptomatic HIV infection and how they will be applied to achieving the objectives of the evaluation study or alternative surveillance initiative. (25 points)

5. How the project will be administered, including the size, qualifications, and time allocation of the proposed staff and the availability of facilities to be used during the surveillance evaluation/initiative and a schedule for accomplishing the activities of the evaluation/initiatives, including time frames. (15 points)

6. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

E.O. 12372 Review

Applications are not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372 (45 CFR Part 100).

CFDA Number

The Catalog of Federal Domestic Assistance number is 13.118.

Other Considerations

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act. Nonexempt research activities involving human subjects must be reviewed and approved by an Institutional Review Board and the Office for Protection from Research Risks, National Institutes of Health.

Application Submission and Deadline

The original and two copies of the application Form PHS–5161–1 (Rev. 11/88) must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 300, Mail Stop–E 14, 255 East Paces Ferry Road NE., Atlanta, Georgia 30305, on or before April 15, 1989.

Application forms should be available in the institution's business office or from the above address.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late applications:* Applications which do not meet the criteria in either paragraph 1.a. or 1.b. immediately above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and application package may be obtained from Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6575 or FTS 236–6575.

Please refer to Announcement Number 921 when requesting information and submitting any application on the Request for Assistance (RFA).

Technical information and assistance may be obtained from James W. Buehler, M.D., AIDS Program, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road NE., Mailstop G–29, Atlanta, Georgia 30333, (404) 639–2045 or FTS 236–2045.

Dated: March 16, 1989.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

FR Doc. 89–6662 Filed 3–21–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Tetracycline Hydrochloride Capsules; Withdrawal of Approval of a New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Solvay Veterinary, Inc. the NADA provides for the use of tetracycline hydrochloride capsules in dogs. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing the portion of the regulation reflecting the approval. The firm requested withdrawal of the approval.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: Solvay Veterinary, Inc., P.O. Box 7348, Princeton, NJ 08540, is the sponsor of NADA 65–064 for tetracycline

hydrochloride capsules. Each capsule contains 250 milligrams of tetracycline hydrochloride. The product is labeled for the treatment of bacterial gastroenteritis due to *Escherichia coli* and urinary tract infections due to *Staphylococcus spp.* and *E. coli*. The NADA was originally approved December 15, 1960. The sponsor has requested withdrawal of the approval because the product has not been manufactured or marketed for a number of years.

Therefore, under the Federal Food, Drug, and Cosmetic Act (section 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 65–064 and all supplements thereto is hereby withdrawn, effective April 3, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing the portion of the regulation reflecting the approval.

Dated: March 15, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–6651 Filed 3–21–89; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting: ORLANDO DISTRICT OFFICE, chaired by Douglas D. Tolen, District Director. The topics to be discussed are health fraud issues and National Consumers Week.

DATE: Monday, April 3, 1989, 2 p.m. to 3:30 p.m.

ADDRESS: University of North Florida, University Theater, Bldg. 14, 4567 St. John's Bluff Rd., Jacksonville, FL 32216.

FOR FURTHER INFORMATION CONTACT: Lynn Isaacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Dr., Suite 120, Orlando, FL 32809, 407–855–0900.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to educate and inform the public on matters pertaining to consumer fraud and quackery, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's consumer education programs.

Dated: March 16, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–6652 Filed 3–21–89; 8:45 am]

BILLING CODE 4160–01–M

Request for Nominations for Members on Public Advisory Committees; Antiviral Drugs Advisory Committee

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for 13 members to serve on the Antiviral Drugs Advisory Committee in FDA's Center for Drug Evaluation and Research. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule announcing the establishment of this committee.

DATE: Nominations should be received on or before April 21, 1989.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to Jack Gertzog (address below). All nominations for consumer-nominated members should be sent to Catherine P. Beck (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for consumer-nominated members: Jack Gertzog, Advisors and Consultants Staff (HFD–9), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

Regarding all nominations for consumer-nominated members: Catherine P. Beck, Office of Consumer Affairs (HFE–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for 13 members on the Antiviral Drugs Advisory Committee. The function of the committee is to review and evaluate available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections, and make appropriate recommendations to the Secretary, the Assistant Secretary for Health, and the Commissioner of Food and Drugs. The committee also provides critical review of agency-sponsored intramural and extramural research programs in support of FDA's regulatory functions.

Persons nominated for membership shall have adequately diversified experience appropriate to the work of the committee in such fields as clinical pharmacology, internal medicine, infectious diseases, microbiology, virology, psychiatry, statistics, epidemiology, ophthalmology, immunology, pediatrics, hematology, and related specialties. The committee may include one technically qualified member who is identified with consumer interests and is nominated by either a consortium of consumer-oriented organizations or other interested persons. The term of office is 4 years, except for the first members appointed: four shall serve for a term of 2 years, four for a term of 3 years, and five for a term of 4 years as designated at the time of appointment.

Interested persons may nominate one or more qualified persons for membership on the advisory committee. Nominations shall state that the nominee is willing to serve as a member of the advisory committee and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

FDA has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and therefore extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

Dated: March 16, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–6728 Filed 3–21–89; 8:45 am]

BILLING CODE 4160–01–M

Request for Nominations for Members on Public Advisory Committee

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Veterinary Medicine Advisory

Committee in FDA's Center for Veterinary Medicine. Three vacancies will occur on the committee on October 31, 1989.

DATE: No cutoff date is established for receipt of nominations.

ADDRESS: All nominations for membership should be submitted to Gary E. Stefan (address below).

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Center for Veterinary Medicine (HFV-244), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0830.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of members on the Veterinary Medicine Advisory Committee. The function of the committee is to review and evaluate available information concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production, and make appropriate recommendations to the Commissioner of Food and Drugs.

Criteria for Members

Persons nominated for membership on the Veterinary Medicine Advisory Committee shall have adequately diversified experience appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the advisory committee. Nominations shall state that the nominee is willing to serve as a member of the advisory committee and appears to have no conflict of interest that would preclude committee membersip. FDA asks potential candidates to provide detailed information concerning such matters as employment, financial holdings, consultancies, and research grants or contracts to permit evaluation of possible source of conflict of interest.

FDA has a special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and handicapped candidates.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: March 16, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-6729 Filed 3-21-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84D-0006]

Compressed Medical Gases; Current Good Manufacturing Practice Revised Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guideline on the preparation of compressed medical gases. The guideline describes practices and procedures that FDA views as acceptable in complying with the current good manufacturing practice (CGMP) regulations for drug products. The practices and procedures described in the guideline are designed to facilitate compliance with the CGMP regulations and to assure the quality of compressed medical gases.

ADDRESSES: Written requests for a copy of the guideline to the Legislative, Professional, and Consumer Affairs Branch (HFD-365), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.) Written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MF 20857.

FOR FURTHER INFORMATION CONTACT: Duane S. Sylvia, Center for Drug Evaluation and Research (HFD-323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8098.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a revised guideline on the production of compressed medical gas drug products. The guideline describes practices and procedures that constitute compliance with 21 CFR Parts 210 and 211 of the CGMP regulations for drugs. The revised guideline has been prepared by the Center for Drug Evaluation and Research.

A notice of the availability of the current edition of the compressed medical gas guideline (December 1983) was published in the **Federal Register** of April 18, 1984 (49 FR 15279). This guideline has been revised as a result of comments received from the Compressed Gas Association, which represents a large number of producers of compressed medical gas drug products. A copy of the comments is on file with the Dockets Management Branch (address above) under Docket No. 84D-0006. No other comments were received on the guideline.

The guideline has been revised as follows:

1. In the "Introduction" section of the guideline, a statement has been added specifically to include the home respiratory segment of the compressed medical gas industry. As defined in the revised guideline, a home respiratory company is a firm that fills, transfills, or distributes compressed medical gas products for use by patients at their residences. Additionally, the "Guidance" parts of the "Labeling Issuance and Packaging and Labeling Operations" and "Testing and Release for Distribution" sections of this guideline have been expanded to include guidance appropriate to home respiratory company operations.

2. The "Guidance" part of the "Testing and Approval or Rejection of Drug Products Containers and Closures" section of the current guideline specifies the performance of dead-ring test for each compressed medical gas cylinder manufactured to 3A or 3AA specifications to determine whether the compressed medical gas cylinder walls have been weakened by interior rust. For purposes of including all types of Department of Transportation-specified compressed gas cylinders that require the performance of a dead-ring test, the phrase "3A or 3AA specifications" has been changed to "specifications under Department of Transportation (DOT) regulation (49 CFR Part 178)."

Additionally, for purposes of detecting possible weakening of aluminum cylinder walls caused by heat or fire, this part has been revised to include a visual check for evidence of exposure to heat or fire of each aluminum cylinder that is provided with a heat-sensitive polyurethane coating or other heat-sensitive indicator.

3. When compressed medical gas containers are refilled, it is acceptable practice not to replace the existing labeling if it is suitable for continued use

(i.e., each container to be refilled is examined to assure that existing labeling is undamaged, legible, and does not bear a previous lot number).

The number of containers not relabeled as well as the number of containers relabeled are recorded as part of the current procedures for reconciling the quantity of labeling issued, used, and returned to inventory. However, the agency believes that the recording of the number of containers not relabeled does not contribute information essential to proper label reconciliation. Therefore, the "Guidance" part of the "Labeling Issuance and Packaging and Labeling Operations" section has been revised to eliminate the recording of the number of containers not relabeled as part of the procedure for label reconciliation.

4. For the purpose of assisting compressed medical gas firms in their efforts to understand and comply with the regulatory requirements that control their products, an appendix has been added to the guideline that provides guidance, in a question and answer format, on the applicability of various laws and regulations to the compressed medical gas industry.

This notice and the revised guideline are issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline is assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternate procedures even though they are not provided for in the guideline. A person who chooses to do so may discuss the matter further with the agency to prevent expenditure of money and effort on an alternate procedure that the agency may later determine to be unacceptable.

Interested persons may submit written comments on the guideline to the Dockets Management Branch (address above). Additional comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted. Comments should be submitted in duplicate (except that individuals may submit one copy), identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the guideline should be sent to the Legislative, Professional, and Consumer Affairs Branch (address above).

Dated: March 16, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-6730 Filed 3-21-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Emergency Medical Services for Children Demonstration Grants

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the application due date for demonstration grants for the expansion and improvement of emergency medical services (EMS) for children. The application due date for EMS for children is extended to June 6, 1989. All other aspects of the February 2, 1989 **Federal Register** Notice remain the same.

Dated: March 16, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-6647 Filed 3-21-89; 8:45 am]

BILLING CODE 4160-15-M

Indian Health Service

Tribal Management Program for American Indian/Alaska Native Tribal Organizations; Grants Application Announcement

AGENCY: Indian Health Service, HHS.

ACTION: Notice of competitiveness grant applications for the Tribal Management Program for American Indian/Alaska native tribal organizations.

SUMMARY: The Indian Health Service (IHS) announces that competitive applications are now being accepted for the Tribal Management Program for American Indian/Alaska Native Tribal Organizations established by Section 104(b)(2) of Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450h(b)(2)), as amended by Pub. L. 100-472 (hereinafter cited as Pub. L. 93-638). The regulations governing these grants are codified at 42 CFR Part 36, Subpart H. This program is within the Catalog of Federal Domestic Assistance Number 13.228. There will be only one funding cycle during Fiscal Year 1989.

DATE: An original and two (2) copies of the completed grant application must be submitted to the Grants Management Specialist, in the appropriate IHS Area Office by close of business on April 19, 1989. Close of business means 4:00 p.m. local time of the Indian Health Service Area Office receiving the application.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Applications received after the announced closing date will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: M. Kay Carpenter, Grants Management Officer, Grants Management Branch, Division of Grants and Contracts, Indian Health Service, Room 6A-33, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-5204. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, programmatic priorities, eligibility requirements, funding availability, and application procedures for the Tribal Management Program for American Indian/Alaska Native Tribal Organizations for Fiscal Year 1989.

A. General Program Purpose

To increase the management capacity of an American Indian/Alaska Native tribal organization to enter into an agreement under the provisions of Pub. L. 93-638 to assume operational control of all or part of an existing IHS direct operated health program.

B. Programmatic Priorities

The IHS has established the following general priorities that will be observed in the award of tribal management grants. For activities designed to improve the capacity of a tribal organization to enter into an assumption agreement, preference in funding will be accorded in the following priority order:

1. First Time Agreements—newly recognized Indian tribes or Indian tribal organizations (received Federal recognition within the past three (3) years), and tribes or tribal organizations that have not received a Pub. L. 93-638 grant or contract for a health program.

2. Previous Pub. L. 93-638 Grant or Contract Recipients.

C. Eligibility Requirements

Any federally recognized Indian tribe or tribal organization as defined in section 4 (b) and (c) of Pub. L. 93–638, the Indian Self-Determination and Education Assistance Act of 1975, and in 42 CFR Part 36, Subpart H, section 36.102 (c) and (d), is eligible to apply for a tribal management grant from the IHS.

D. Fund Availability

Approximately $2,268,500 is available in fiscal year 1989 during this cycle for award of tribal management grants under Section 104(b)(2). The average funding level for tribal management projects in FY 1988 was approximately $38,000. The approximate amount of funding available from each of the eleven IHS Area Offices and the Office of Health Program Development is:

Aberdeen Area Office	$250,000
Alaska Native Health Service	335,000
Albuquerque Area Office	125,000
Bemidji Area Office	150,000
Billings Area Office	130,000
California Area Office	220,000
Nashville Area Office	215,000
Navajo Area Office	120,000
Oklahoma City Area Office	240,000
Phoenix Area Office	130,000
Portland Area Office	295,000
Office of Health Program Development	58,500

E. Type of Program Activities Considered for Support

Grants will be awarded for projects in five general categories. Tribal management grants are awarded for the purposes of feasibility studies, planning, the development of tribal health management structures, training and staff development, and evaluation studies.

F. Application Process

Application for tribal management grants is governed by regulations codified at 42 CFR Part 36, Subpart H, section 36.104.

1. An *IHS Tribal Management Grant Application Kit*, including Standard Form 424 (Rev. 4–88) may be obtained from the Grants Management Specialist in the IHS Area Office that serves the applicant. The address and telephone number of the IHS Area Offices are:

Aberdeen Area Indian Health Service, Federal Building, 115 4th Avenue SE., Aberdeen, South Dakota 57401, (605) 348–1900.
Alaska Area Native Indian Health Service, P.O. Box 107741, Anchorage, Alaska 99501–7741, (907) 257–1139.
Albuquerque Area Indian Health Service, 505 Marquette NW., Suite 1502, Albuquerque, New Mexico 87102, (505) 766–1624.
Bemidji Area Indian Health Service, 203 Federal Building, Bemidji, Minnesota 56601, (218) 751–7701.
Billings Area Indian Health Service, P.O. Box 2143, Billings, Montana 59103, (406) 657–6007.
California Area Indian Health Service, 2999 Fulton Avenue, Sacramento, California 95821, (916) 978–4191.
Nashville Area Indian Health Service, 1101 Kermit Drive, Suite 810, Nashville, Tennessee 37217, (615) 736–5104.
Navajo Area Indian Health Service, P.O. Box G, Window Rock, Arizona 86515, (602) 871–8214.
Oklahoma City Area Indian Health Service, 215 Dean A. McGee Street, NW., Oklahoma City, Oklahoma 73102, (405) 231–4211
Phoenix Area Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, Arizona 85016, (602) 241–2106.
Portland Area Indian Health Service, 1220 SW. Third Avenue, Room 476, Portland, Oregon 97204, (503) 221–4123.
Office of Health Program and Development, 7900 S. J. Stock Road, Tucson, Arizona 85746, (602) 629–6704.

2. The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award.

3. Each application will be reviewed by the Contract Proposal Liaison Officer (CPLO) for completeness, accuracy, and eligibility. All acceptable applications will be subject to a competitive review and evaluation. The Tribal Management Program is not subject to E.O. 12372.

4. All applicants will be notified regarding the status of their applications (approved, approved unfunded, or disapproved) by July 3, 1989. Projects will begin August 1, 1989.

G. Criteria for Review and Evaluation

1. The program narrative statement must include the following elements
—Need
—Results or Benefits
—Approach
—Geographic Location
—Key Personnel
—Adequacy of Management Controls

These headings are defined and clarified in the Program Guidelines, Part III, which are contained in the IHS Tribal Management Grant Application Kit.

Applications will be evaluated in accordance with the program regulations set forth at 42 CFR Part 36, Subpart H, section 36.106.

2. The project period for any proposal will not exceed one year.

Date: February 10, 1989.

Everett R. Rhoades,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 89–6646 Filed 3–21–89–8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, April 13, 1989, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on April 13, 1989, from 10 a.m. to 11:00 a.m. to discuss administrative matters. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 13 from 11:00 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7030) will furnish substantive program information.

Dated: March 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–6684 Filed 3–21–89; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Frederick Cancer Research Facility (FCRF) Advisory Committee, National Cancer Institute, May 15–16, 1989, Building 549, Executive Board Room, at the NCI Frederick Cancer Research Facility, Frederick, Maryland 21701–1013.

The meeting will be open to the public on May 15 from 8:30 a.m. to approximately 11 a.m. to discuss administrative matters, future meetings, status of AIDS vaccine development, and concept review of expanded research by an FCRF contractor and renewal of a subcontract in AIDS research. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 15 from approximately 11 a.m. to recess and on May 16 from 8:30 a.m. to adjournment for site visit of research being conducted by the Basic Research Program's Mammalian Genetics Laboratory. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301, 496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research Facility Advisory Committee, National Cancer Institute Frederick Cancer Research Facility, Building 427, Frederick, Maryland 21701–1013 (301, 698–1108) will provide substantive program information upon request.

Dated: March 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–6685 Filed 3–21–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of the Board of Scientific Counselors, NIEHS

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIEHS, April 18–19, 1989, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 9 a.m. to 12 noon on April 18, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Molecular and Integrative Neuosciences. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5 U.S. Code and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 18 from approximately 1 p.m. to adjournment on April 19, for the evaluation of the programs of the Laboratory of Molecular and Integrative Neurosciences, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. John McLachlan, Scientific Director, Division of Intramural Research, NIEHS, Research Triangle Park, NC 27709, telephone (919) 541–3205, FTS 629–3205, will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: March 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–6686 Filed 3–21–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of the NIDR Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Councelors, National Institute of Dental Research (NIDR), on April 26–28, 1989, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to recess on April 26 and from 8:30 a.m. to 12:15 p.m. on April 27. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 522b(c)(6),Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1:30 p.m. to recess on April 27 and from 9:00 a.m. to adjournment on April 28 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural Research, NIDR, NIH, Building 30, Room 132, Bethesda, Maryland 20892 (telephone 301–496–1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated: March 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–6687 Filed 3–21–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of the Board of Scientific Counselors, Division of Biometry and Risk Assessment

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DBRA, May 2–3, 1989, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 8:00 a.m. to 5 p.m. on May 2, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Biochemical Risk Analysis. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5 U.S. Code and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 3, for the evaluation of the programs of the Laboratory of Biochemical Risk Analysis, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David Hoel, Director, Division of Biometry and Risk Assessment, NIEHS, Research Triangle Park, NC 27709, telephone (919) 541–3441, FTS 629–3441, will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: March 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–6688 Filed 3–21–89; 8:45 am]

BILLING CODE 4140–01–M

Meetings; Minorities in Biomedical Research Support Programs

Notice is hereby given that the National Institutes of Health (NIH) will hold the second and third of a series of five regional public meetings to be conducted under the auspices of the Office of the Director, NIH, on

"Programs for Support of Minorities in Biomedical Research." The purpose of the meetings is two-fold:

(1) To provide current information concerning the activities of the NIH by describing in broad terms existing programs offered by NIH, and

(2) To solicit through public testimony the views of biomedical researchers, university faculty and administrators, students, representatives of professional societies, and other interested parties regarding the nature and scope of programs to attract and support minorities in biomedical research.

The second meeting will be held on Thursday, April 20, 1989, from 8:30 a.m. to 4:30 p.m. in Building 31, Conference Room #4 at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The third meeting will be held at the Morehouse School of Medicine, 720 Westview Drive, SW., Atlanta, Georgia, on May 12. Subsequent meetings will be held in Phoenix, Arizona on September 24 and Anchorage, Alaska on October 9.

Following presentations by senior NIH staff, a panel comprised of NIH program administrators will spend the remainder of each day receiving testimony from public witnesses. Each witness will be limited to a maximum of ten minutes. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or to present a statement at these public meetings should notify, in writing, William H. Pitlick, Ph.D.,. Executive Secretary, National Institutes of Health, Shannon Building, Room 250, Bethesda, Maryland 20892.

Those planning to make a presentation at Bethesda, Maryland should file a one-page summary of their remarks with Dr. Pitlick by April 6, 1989; those wishing to make a presentation at Atlanta should file a one-page summary by April 14. A copy of the full text should be submitted for the record at the time of the meeting. Additional information may be obtained by calling Ms. Loretta Beuchert, Office of Extramural Research, National Insititutes of Health, at (301) 496–9743.

Dated: March 17, 1989.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 89–6795 Filed 3–21–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–920–89–4120–11; COC48969]

Colorado; Invitation for Coal Exploration License Application; Western Fuels-Utah, Inc.

March 13, 1989.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Western Fuels-Utah, Inc., in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Rio Blanco County, Colorado:

Township 3 North, Range 101 West, 6th p.m.

Sec. 25, all,
Sec. 26, all,
Sec. 34, N½, N½SE¼,
Sec. 35, N½, N½S½,
Sec. 36, N½, N½S½.

The area described contains approximately 2640.00 acres, more or less.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC48969 at the BLM Colorado State Office, Public Room, 2850 Youngfield Street, Lakewood, Colorado 80215 and at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate. Written Notice of Intent to Participate should be addressed to the following and shall be made by April 21, 1989.

Richard D. Tate, Chief, Mining Law and Solid Minerals Adjudication Section, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, and Don L. Deardorff, Manager, Engineering and Exploration, Western Fuels-Utah, Inc., 405 Urban Street, Suite 305, Lakewood, Colorado 80228.

Richard D. Tate,

Chief, Mining Law and Solid Minerals, Adjudication Section.

[FR Doc. 89–6670 Filed 3–21–89; 8:45 am]

BILLING CODE 4310–JB–M

[AZ 020–09–4212–12; AZA 20346–U]

Realty Action: Exchange of Public Lands, Gila, Maricopa, Yavapai, and Pinal Counties, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions or all of public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 1 N., R. 15½ E.,
Sec. 26.
T. 4 N., R. 1 E.,
Secs. 6, 7.
T. 7 N., R. 1 E.,
Secs. 3, 4, 12.
T. 7 N., R. 2 E.,
Secs. 4, 5, 8, 9, 15, 16, 17, 20, 21, 26, 27, 29, 34.
T. 8 N., R. 1 E.,
Sec. 31.
T. 8 N., R. 2 E.,
Secs. 1, 10, 11, 12, 14, 15, 22, 23, 26, 27, 28, 29, 32, 33, 34.
T. 9 N., R. 1 E.,
Secs. 14, 17, 18, 19, 20, 21, 28, 36.
T. 9 N., R. 2 E.,
Secs. 3, 9, 10, 15, 22, 27, 29, 30, 31.
T. 9 N., R. 3 E.,
Secs. 9, 18, 31.
T. 9½ N., R. 2 E.,
Secs. 20, 23, 26, 34.
T. 9½ N., R. 3 E.,
Secs. 20, 21, 30.
T. 10 N., R. 2 E.,
Secs. 1, 2, 3, 4, 9, 10, 11, 14, 15, 16, 17, 23, 26, 33, 35.
T. 11 N., R. 2 E.,
Secs. 4, 5, 7, 8, 14, 17, 20, 21, 22, 23, 26, 27, 28, 29, 33, 34, 35, 36.
T. 11 N., R. 3 E.,
Secs. 1, 2, 3, 10, 11, 13, 14, 15, 23, 24, 26, 27, 28, 29, 30, 31.
T. 12 N., R. 1 E.,
Secs. 11, 24.
T. 12 N., R. 2 E.,
Secs. 3, 4, 5, 8, 9, 10, 15, 18, 21, 28, 33.
T. 13 N., R. 1 E.,
Secs. 8, 13, 15, 18, 23, 26.
T. 13 N., R. 2 E.,
Secs. 6, 7, 17, 18, 19, 20, 29, 30, 32.
T. 14 N., R. 2 E.,
Sec. 31.
T. 16 N., R. 1 E.,
Secs. 6, 21.
T. 14 N., R. 1 W.,
Secs. 28, 31, 33.
T. 16 N., R. 1 W.,
Sec. 1.
T. 4 S., R. 8 E.,
Sec. 12.
T. 4 S., R. 9 E.,
Secs. 7, 18.

T. 7 S., R. 4 E.,
Secs. 27, 28, 34, 35.
T. 10 S., R. 11 E.,
Secs. 6, 19, 26.
T. 10 S., R. 12 E.,
Secs. 19, 21, 22, 27, 30, 34, 35.
Containing 64,519.69 acres, more or less.

Detailed information concerning this exchange can be obtained from the Phoenix District Office.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Charles R. Frost,

Associate District Manager.

Date: March 16, 1989.

[FR Doc. 89-6664 Filed 3-21-89; 8:45 am]

BILLING CODE 4310-32-M

National Park Service

Concession Contract Grand Canyon National Park; Babbitt Brothers Trading Co.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract to continue operation of existing general store services for the public at Grand Canyon National Park, Arizona for a period of fifteen (15) years.

EFFECTIVE DATE: May 22, 1989.

ADDRESS: Interested parties should contact Mr. Stephen G. Crabtree, Division of Concessions Program Management, Western Region, 450 Golden Gate Avenue, San Francisco, California 94102, (415) 556-5510, for the necessary application or for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This proposed contract requires/authorizes a construction and improvement program. The construction and improvement program required/authorized was previously addressed in the National Environmental Policy Act document Final Environmental Statement, Proposed Master Plan, Grand Canyon National Park.

The existing concessioner Babbitt Brothers Trading Company has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1987, and which has been extended until December 31, 1987, or upon the execution of the new contract, whichever occurs first. Therefore, pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S. C. 20), the existing concessioner is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: February 8, 1989.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 89-6693 Filed 3-21-89; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract National Park; Grand Canyon Trails

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit to continue the provision of guided hiking service, the rental and repair of hiking equipment and to provide for the sale of hiking related merchandise for the public at Grand Canyon National Park for a period of 5 years.

EFFECTIVE DATE: May 22, 1989.

ADDRESS: Interested parties should contact Mr. Stephen G. Crabtree, Division of Concessions Program Management, Western Region, 450 Golden Gate Avenue San Francisco, California 94102, (415) 556-5510, for the necessary application or for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The existing concessioners, Canyoneers, Inc., dba Grand Canyon Trails has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on September 30, 1988, and which has been extended through September 30, 1989, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date: February 7, 1989.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 89-6694 Filed 3-21-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of Information Collection

The proposed information collection is for use by the Commission in connection with investigation No. 332-135 for the quarterly preliminary report on U.S. production of selected synthetic organic chemicals, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Summary of Proposal

(1) *Number of forms submitted:* One

(2) *Title of form:* Preliminary Report on U.S. Production of Selected Synthetic Organic Chemicals (Including Synthetic Plastics and Resins materials)

(3) *Type of request:* Extension

(4) *Frequency of use:* Quarterly

(5) *Description of respondents:* Firms manufacturing selected synthetic organic chemicals in the United States

(6) *Estimated number of respondents:* 300

(7) *Estimated total number of hours to annually complete the forms:* 1,200

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from James A. Emanuel, telephone (202) 252–1367. Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Don Arbuckle, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly, you should advise OMB of your intent within 2 weeks of the date this notice appears in the Federal Register. Mr. Arbuckle's telephone number is (202) 395–7340. Copies of any comments should be provided to Charles Ervin (U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By order of the Commission.

Keneth R. Mason,

Secretary.

Issued: March 17, 1989.

[FR Doc. 89–6761 Filed 3–21–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–388 (Final)]

Certain All-Terrain Vehicles From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of import from Japan of all-terrain vehicles (ATVs), provided for in subheading 8703.21.00 of the Harmonized Tariff Schedule of the United States (these products were previously provided for in item 692.10 of the Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective September 12, 1988, following a preliminary determination by the Department of Commerce that imports of ATVS from Japan were being sold at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of October 26, 1988 (53 FR 43275). The hearing was held in Washington, DC, on January 26, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 10, 1989. The views of the Commission are contained in USITC Publication 2163 (March 1989), entitled "Certain All-Terrain Vehicles from Japan: Determination of the Commission in Investgation No. 731–TA–388 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission:

Kenneth R. Mason,

Secretary.

Issued: March 14, 1989.

[FR Doc. 89–6765 Filed 3–21–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–294]

Certain Carrier Materials Bearing Ink Compositions To Be Used in a Dry Adhesive-free Thermal Transfer Process; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 14, 1989, under section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337), on behalf of Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133. The complaint alleges violations of section 337 in the importation and sale in the United States of certain carrier materials bearing thermally transferable ink compositions to be used in a process for dry adhesive-free thermal transfer of said ink compositions, by reason of alleged contributory and induced infringement of claims 1 through 8, 10 through 13, 15 and 22 of U.S. Letters Patent 4,737,224; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1575.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 19, 1988).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on March 15, 1989, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain carrier materials bearing ink compositions to be used in a dry adhesive-free thermal transfer process, by reason of alleged contributory or induced infringement of claims 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15 or 22 of U.S. Letters Patent 4,737,224, and whether there exists an industry in

[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)), as amended, 53 FR 33041 (August 29, 1988).

the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Signtech, Inc., 7500 Kimbel Street, Mississauga, Ontario, Canada L5S 1A2.

Graflex, 115 Canal Street, Shelton, Connecticut 06484.

Harlan Laws Corp., U.S. 70 and NC 98 Interchange, Durham, North Carolina 27704.

McHenry Industries, 592 Industrial Road, Youngstown, Ohio 44509.

Acme-Wiley Corp., 2480 Greenleaf Avenue, Elk Grove Village, Illinois 60007.

Superior Electrical Advertising, 1700 West Anaheim Street, Long Beach, California 90813.

Fairmont Sign Co., 6771 E. McNichols, Detroit, Michigan 48212.

Dualite Inc., 1 Dual Lane, Williamsburg, Ohio 45176.

Persona Inc., P.O. Box 1593, Watertown, South Dakota 57201.

(c) T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401P, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to sections 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33059 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 16, 1989.

[FR Doc. 89-6764 Filed 3-21-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 11), as recertified to the Commission, issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation as to respondent Luc Noel on the basis of a consent order, and an ID (Order No. 22) amending the notice of investigation to include products incorporating chemiluminescent compositions and components thereof.

ADDRESSES: Copies of the IDs and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 am. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC. 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Thomas J. O'Connell, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC, telephone 202-252-1108. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On February 15, 1989, the presiding ALJ issued an ID (Order No. 22) granting complainant's motion to amend the notice of investigation to include products incorporating chemiluminescent compositions and components thereof, and recertifying an ID (Order No. 11) terminating the investigation as to respondent Luc Noel on the basis of a consent order. No petitions for review of the ID or government or public comments were received.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.53(h) of the Commission's Interim Rules of Practice and Procedure, 53 FR 33070 (Aug. 29, 1988).

By order of the Commission.

Issued: March 15, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-6763 Filed 3-21-89; 8:45 am]

BILLING CODE 7020-02-M

Natural Bristle Paint Brushes From the People's Republic of China; Request for Comments

AGENCY: United States International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-244 (Final), Natural Bristle Paint Brushes from the People's Republic of China.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determination in investigation No. 731-TA-244 (Final), regarding natural bristle paint brushes from the People's Republic of China. The purpose of the proposed 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of natural bristle paint brushes from the People's Republic of China if the antidumping duty order regarding such merchandise were to be modified or revoked. Natural bristle paint brushes are provided for in item 9603.40.40 of the Harmonized Tariff Schedule of the United States.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202-252-1199), Office of Investigations, U.S. International Trade Commission, 500 E Street SW.,

Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION: On February 6, 1986, the Commission issued its determination in investigation No. 731–TA–244 (Final), Natural Bristle Paint Brushes from the People's Republic of China (FR 4662). The Commission determined that an industry in the United States was threatened with material injury by reason of imports from the People's Republic of China of natural bristle paint brushes, except artists' brushes, which had been found by the Department of Commerce to be sold at less than fair value (LTFV). On February 14, 1986, the Department of Commerce issued an antidumping duty order, notice of which was published in the **Federal Register** (51 FR 5580).

On February 28, 1989, the Commission received a request, pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. 731–TA–244 (Final). This request was filed by counsel on behalf of A. Hirsh, Inc., an importer of natural bristle paint brushes from the People's Republic of China. It follows an earlier request for review of February 24, 1988, which was dismissed by the Commission on May 17, 1988.

Written Comments Requested

Pursuant to section 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation. The domestic industry is currently in strong condition and has not experienced the threatened material injury found by the Commission. As a consequence of the imposition of the antidumping duty order, shipments of natural bristle paint brushes from the People's Republic of China have been brought to a virtual halt, and have been replaced by other imports, not by domestic paint brushes. Chinese paintbrush inventories are now virtually non-existent. Chinese paint brushes are less competitive within the U.S. market, and price suppression as a result of their penetration in the U.S. market never materialized. The Chinese economy is increasingly being driven by market forces, not centralized planning, and should be considered a market economy. This factor serves as an incentive for Chinese vendors of paint brushes to raise their prices, and import statistics appear to show they have done so. Thus the domestic industry is not vulnerable to injury and would not suffer material injury if the antidumping duty order with respect to the People's Republic of China were revoked.

Written Submissions

In accordance with section 201.8 of the Commission's rules (19 CFR 201.8), the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under section 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary to the Commission and must include a full statement of the reason why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission; telephone 202–252–1000.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 16, 1989.

[FR Doc. 89–6762 Filed 3–21–89; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 12, 1989, Mallinckrodt, Specialty Chemicals Company, Mallinckrodt and Second Street, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extracts (9620	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 21, 1989.

Dated: March 16, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–6654 Filed 3–21–89; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for

the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 19, 1989, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca leaves (9040)	II
Opium plant form (9650)	II
Concentrate of poppy straw (9670)	II
Raw opium (9600)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 21, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: March 13, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–6655 Filed 3–21–89; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Registration

By Notice dated October 3, 1988, and published in the **Federal Register** on October 12, 1988, (53 FR 39814), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca leaves (9040)	II
Raw opium (9600)	II
Opium plant form (9650)	II
Concentrate of poppy straw (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: March 16, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–6656 Filed 3–21–89; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 16, 1989, Smithkline and French Labs, Division of Smithkline Beckman Corporation, 1530 Spring Garden St., Attn: D–97, Philadelphia, Pennsylvania 19101, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objecitons or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 21, 1989.

Dated: March 3, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–6657 Filed 3–21–89; 8:45 am]

BILLING CODE 4410–09–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Amendment of Privacy Act Systems of Records

AGENCY: Merit Systems Protection Board.

ACTION: Notice of amendment to existing systems of records.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) publishes this document pursuant to the requirements of the Privacy Act of 1974 at 5 U.S.C. 552a(e)(4), to update the existence and character of systems of records, and to amend the routine uses of those records to provide for disclosure of personal information from systems of records during the course of litigation.

EFFECTIVE DATE: March 22, 1989.

ADDRESS: Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, (202) 653–7200.

SUPPLEMENTARY INFORMATION: This notice amends the text of the MSPB's systems of records notice published at 47 FR 57792, December 28, 1982, as it pertains to the following systems of records:

1. MSPB/CENTRAL–1 AND MSPB/CENTRAL–2, Survey Mailing Lists and Panel Respondent Mailing Lists: These systems have been deleted. The Board no longer maintains these records.

Records which were previously maintained in these systems have been destroyed.

2. MSPB/CENTRAL–3, Correspondence Control Records and MSPB/Central–4, General Correspondence Records: Redesignated MSPB/CENTRAL–1 and MSPB/CENTRAL–2, respectively. System location and System Manager(s) have been changed to reflect changes in Board organization; storage for CENTRAL–3 (now CENTRAL–1) has been changed to computer discs and/or magnetic tape, and the system name changed to Assignment and Correspondence Tracking System Records.

3. MSPB/CENTRAL–5, Freedom of Information Act/Privacy Act Case

Records: Redesignated MSPB/CENTRAL–3. System location and System Manager have been changed to reflect changes in Board organization; under the routine use heading, c. has been removed and a new c. and d. have been added to more accurately reflect the use of records in court proceedings; d. through i. have been changed to e. through j.

4. MSPB/CENTRAL–6, Litigation and Claims Records: Redesignated MSPB/CENTRAL–4.

5. The appendix listing regional offices has been revised to reflect changes in regional office addresses.

Date: March 16, 1989.

Robert E. Taylor,

Clerk of the Board.

Accordingly, the U.S. Merit Systems Protection Board amends its system of records by deleting MSPB/CENTRAL–1 Survey Mailing Lists and MSPB/CENTRAL–2, Panel Respondent Mailing Lists; by redesignating and revising MSPB/CENTRAL–3, Correspondence Control Records, MSPB/CENTRAL–4, General Correspondence Records, and MSPB/CENTRAL–5, Freedom of Information Act/Privacy Act Case Records; and by redesignating MSPB/CENTRAL–6, Litigation and Claims Records.

Table of Contents

MSPB/CENTRAL–1

SYSTEM NAME:

Assignment and Correspondence Tracking System Records (ACTS).

SYSTEM LOCATION:

Offices of the Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have written the MSPB on official business and whose letters are controlled in order to ensure appropriate and timely response; individuals who have written the White House or Congressional offices and whose letters are referred to MSPB for response.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information identifying the correspondent, subject, date, and disposition of the correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205.

PURPOSE(S):

These records are used to control correspondence sent to the Board to ensure appropriate and timely response.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be disclosed:

a. To another Federal agency to whom correspondence is referred for reply.

b. To the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of a civil or criminal law or regulation.

c. To a congressional office in response to an inquiry from that congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on a fixed disc storage system in a minicomputer and on magnetic tape.

RETRIEVABILITY:

These records are retrieved by the name of the correspondent or individual on whose behalf the correspondence is transmitted, the date and subject of the correspondence, or an assigned control number.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Automated records in this system are maintained in a locked room in a building with restricted access. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

These records are retained for 1 year on a fixed disc, then downloaded to magnetic tape and kept for 1 additional year, and then destroyed by erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Resources Management Division, Office of Administration Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contract the clerk of the Board and must follow the BSPB Privacy Act regulations at CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Individuals wishing to amend records pertaining to them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual to whom the record pertains or by individuals or organizations writing on behalf of the individuals.

MSPB/CENTRAL–2

SYSTEM NAME:

General Correspondence Records.

SYSTEM LOCATION:

Office of the Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419 and MSPB regional offices (see list of regional office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees and members of the public who have written the MSPB seeking information, registering complaints, or making known their views.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the incoming correspondence and copies of the MSPB reply or referral.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205.

PURPOSE(S):

These records are used to document correspondence with the Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from these records may be disclosed:

a. To another agency to whom the incoming correspondence is referred for reply;

b. To the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, ruel, regulation or order where there is an indication of a violation or potential violation of a civil or criminal law or regulation; and

c. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by name and date of correspondence.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

These records are retained for 1 year, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419, and MSPB regional directors (see list of regional office addresses in the Appendix).

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contract the Clerk of the Board or the appropriate regional office and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board, or the appropriate regional office and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

CONTESTING RECORD PROCEDURES:

Individuals wishing to amend records should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

a. Individual to whom the record pertains:

b. Official documents relating to the correspondence: and

c. Related correspondence from agencies, organizations, or persons.

MSPB/CENTRAL–3

SYSTEM NAME:

Freedom of Information Act/Privacy Act Case Records.

SYSTEM LOCATION:

Office of the Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419 and MSPB regional officies (see list of regional office addresses in Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who have filed with the MSPB:

a. Requests for information under the Freedom of Information Act (5 U.S.C. 552) including requests for review of initial denials of such requests; and

b. Requests under the Privacy Act (5 U.S.C. 552a) for records about themselves, including requests for:

(1) Notification of the existence of records about them;

(2) Access to these records:

(3) Amendment of these records;

(4) Review of initial denials of requests for amendment; and

(5) An accounting of disclosure of records about them.

Note: Since these records may contain inquiries and requests regarding other MSPB systems of records subject to the Privacy Act, information about individuals from any of these other systems may become part of this Freedom of Information/Privacy Act Case Records system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to requests by individuals to the MSPB for:

a. Information under the Freedom of Information Act (5 U.S.C. 552) including requests for review of initial denials of such requests; and

b. Information under the Privacy Act (5 U.S.C. 552a) and requests for review of initial denials of such requests made under the MSPB Privacy Act regulations including requests for:

(1) Notification of the existence of records;

(2) Access to these records;

(3) Amendment to these records;

(4) Review of initial denials of requests for amendment; and

(5) An accounting of disclosure of records about them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a, 1205.

PURPOSES(S):

These records are maintained to process requests made under the Freedom of Information and Privacy Acts. These records are also used by MSPB to prepare its annual reports to OMB and Congress as required by the Privacy and Freedom of Information Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from these records may be disclosed:

a. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as stated in OMB Circular No. A–19;

b. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual;

c. To the Department of Justice when:

(1) The agency, or any component thereof; or

(2) Any employee of the agency in the employee's official capacity; or

(3) Any employee of the agency in the employee's individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose of which the records were collected; or approval or consultation is required.

d. In any proceeding before a court or other adjudicative body before which the agency is authorized to appear, when:

(1) The agency, or any component thereof; or

(2) Any employee of the agency in the employee's official capacity; or

(3) Any employee of the agency in the employee's individual capacity where the agency has agreed to represent the employee; or

(4) The United States is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose for

which the records were collected; or approval or consultation is required.

e. To the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

f. To officials of the Office of Personnel Management, Federal Labor Relations Authority, and the Equal Employment Opportunity Commission in conjunction with the preformance of their authorized duties;

g. To Federal agencies in order to obtain advice and recommendations concerning matters on which the agency has specialized experience or particular competence which MSPB may use in making determinations under the Freedom of Information Act;

h. To any source from which MSPB requests additional information (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an MSPB determination concerning a Privacy Act of Freedom of Information Act request;

i. In response to a request for discovery or for appearance of witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding; and

j. To the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where MSPB becomes aware of an indication of a violation or potential violation of a civil or criminal law regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by name of the individual on whom they are maintained and the date of request.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets. Access to and use of these records is limited to persons whose official duties require such access.

RETENTION AND DISPOSAL:

Requests under the Freedom of Information Act are maintained for 2 years, then destroyed by shredding. Requests under the Privacy Act are maintained for 5 years, then destroyed by shredding. Records of administrative appeals from denials of access to records under the Freedom of Information Act and denials of requests to amend records under the Privacy Act are maintained for 6 years, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Clerk of the Board, 1120 Vermont Avenue NW., Washington, DC 20419, and MSPB regional directors (see list of regional office addresses in the Appendix).

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board or the appropriate MSPB regional office and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board or the appropriate MSPB regional office and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Individuals wishing to amend records about themselves should contact the Clerk of the Board or the appropriate MSPB regional office and must follow the MSPB regulations at 5 CFR 1205.21 regarding amendment of records and verification of identify.

Note.—The amendment provisions for this system are not intended to permit an individual a second opportunity to request amendment of a record which was the subject of the initial Privacy Act amendment request which created the record in the system. That is, after an individual has requested amendment of a record under the Privacy Act, that record may become part of this system of Privacy Act/Freedom of Information Act case records. Thus, an individual may not subsequently request amendment of that record again simply because a copy of the record has become part of the second system of Privacy Act/Freedom of Information Act case records.

RECORD SOURCE CATEGORIES:

a. The individual who is the subject of the records;

b. MSPB officials who respond to Privacy Act/Freedom of Information requests;

c. Official personnel documents of MSPB including records from other MSPB system of records included in this notice;

d. Other sources whom MSPB believes have information pertinent to an MSPB determination of a Privacy Act or Freedom of Information Act request; and

e. Other agencies referring the request to PSPB.

MSBP/CENTRAL–4

SYSTEM NAME:

Litigation and Claims Records.

SYSTEM LOCATION:

Office of the General Counsel, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue NW., Washington, DC 20419.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who file civil actions against MSPB, its officials, and its employees;

b. Individuals who are parties to actions in which an MSPB final decision is involved but in which MSPB is not a party to the proceeding; and

c. Individuals who file claims against MSPB under the Federal Tort Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes pleadings and documentation of litigation such as complaints, answers, motions, briefs, orders, and decisions; claims and supporting documentation submitted under the Federal Tort Claims Act, together with correspondence and records of final administrative determinations.

To the extent that records listed here, or portions thereof, are also maintained in an automated litigation tracking system, those versions or extracts of the records are considered to be covered by this system notice.

AUTHORITIES FOR MAINTENANCE OF THE RECORDS:

5 U.S.C. 1205, 7703; 28 U.S.C. 2672.

PURPOSE(S):

These records are maintained to defend MSPB against lawsuits; to settle administrative claims brought against the MSPB; and to provide records of court proceedings that involve final Board decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be disclosed:

a. To the appropriate Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, or regulation, or order where the Board becomes aware of a violation or

potential violation of civil or criminal law or regulation;

b. to any source where necessary to obtain information relevant to an MSPB decision or action involved in one of the purposes of maintenance of the system;

c. To a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter;

d. To a congressional office in response to an inquiry made at the request of the individual from whose record the information is provided;

e. To the Department of Justice or other agency when:

(1) The agency, or any component thereof; or

(2) Any employee of the agency in the employee's official capacity; or

(3) Any employee of the agency in the employee's individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, provided that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose of which the records were collected; or approval or consultation is required.

f. In a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(1) The agency, or any component thereof; or

(2) Any employee of the agency in the employee's official capacity; or

(3) Any employee of the agency in the employee's individual capacity where the agency has agreed to represent the employee; or

(4) The United States is a party to litigation or has an interest in such litigation and the use of such records is relevant and necessary to the litigation, provided that the disclosure of the records to the tribunal is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

g. To the National Archives and Records Administration for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

h. To the insurance carrier of an employee of, or a claimant against, MSPB under the Federal Tort Claims Act to determine the proper assignment of any liability;

i. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding; and

j. To officials of the Office of Personnel Management, Federal Labor Relations Authority or Equal Employment Opportunity Commission when requested in connection with the performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders in lockable metal filing cabinets and on computer discs and tapes.

RETRIEVABILITY:

Records are retrieved by various combinations of name, social security number, or docket control or decision numbers.

SAFEGUARDS:

Paper records are located in metal file cabinets or in secured areas with access limited to persons whose official duties require such access. Access to computerized records is limited, through the use of access codes and entry logs, to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

These records are maintained for 6 years after the case is closed by court action and then destroyed by shredding. Automated data on individual cases are erased 6 years after the case is closed by court action.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such requests.

CONTESTING RECORD PROCEDURES:

Individuals wishing to amend records should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.21 regarding amendment of records.

RECORD SOURCE CATEGORIES:

a. Individual to whom the record pertains;

b. Agency officials and records;

c. Records of MSPB and Equal Employment Opportunity Commission administrative proceedings and court documents; and

d. Witnesses.

Appendix

Regional Offices of the Merit Systems Protection Board

Atlanta Regional Office, Merit Systems Protection Board, 1365 Peachtree Street, NE, Suite 500, Atlanta, Georgia 30309–3199

Boston Regional Office, Merit Systems Protection Board, 10 Causeway Street, Suite 1078, Boston, Massachusetts 02222–1042

Chicago Regional Office, Merit Systems Protection Board, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604–1669

Dallas Regional Office, Merit Systems Protection Board, 1100 Commerce Street, Room 6F20, Dallas, Texas 75242–9979

Denver Regional Office, Merit Systems Protection Board, P.O. Box 25025 (for regular mail), 730 Simms Street, Room 301 (for express mail), Denver Colorado 80225–0025

New York Regional Office, Merit Systems Protection Board, 26 Federal Plaza, Room 3137–A, New York, New York 10278–0022

Philadelphia Regional Office, Merit Systems Protection Board, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106–2904

St. Louis Regional Office, Merit Systems Protection Board, 911 Washington Avenue, Suite 615, St. Louis, Missouri 61101–1203

San Francisco Regional Office, Merit Systems Protection Board, 525 Market Street, Room 2800, San Francisco, California 94105–2789

Seattle Regional Office, Merit Systems Protection Board, 915 Second Avenue, Room 1840, Seattle, Washington 98174–1001

Washington, DC Regional Office, Merit Systems Protection Board, 5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041–3473.

[FR Doc. 89–6705 Filed 3–21–89; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. (92–463), as amended, notice is hereby given that a meeting of the Music

Advisory Panel (Composers Prescreening Section) to the National Council on the Arts will be held on April 26–27, 1989, from 9:00 a.m.-5:30 p.m. in Room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** on February 13, 1980, these sessions will be closed to the public pursuant to subsections (C) (4), (6) and (9) (B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506 or call 202/682–5433.

March 15, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–6677 Filed 3–21–89; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowship Section) to the National Council on the Arts will be held on April 10–13, 1989, from 9:00 a.m.–7:00 p.m. and April 14, 1989, from 9:00 a.m.–6:00 p.m. in Room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 14, 1989, from 4:00 p.m.–6:00 p.m. The topics for discussion will be policy issues.

The remaining sessions of this meeting on April 10–13, 1989, from 9:00 a.m.–7:00 p.m., and April 14, 1989, from 9:00 a.m.–4:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

March 14, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–6678 Filed 3–21–89; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (New Genres Section) to the National Council or Arts will be held on April 10–14, 1989, from 9:00 a.m.–8:00 p.m. and April 15, 1989, from 9:00 a.m.–5:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Ths meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** on February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

March 15, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–6679 Filed 3–21–89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Baltimore Gas and Electric Co.; Calvert Cliffs Nuclear Power Plant Unit 2; Exemption

I

The Baltimore Gas and Electric Company (the licensee) is the holder of Facility Operating License No. DPR–69, which authorizes operation of the Calvert Cliffs Nuclear Power Plant Unit No. 2 (the facility). The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is one of two pressurized water reactors located at the licensee's site in Calvert County, Maryland.

II

Sections III.D.2(a) and III.D.3 of Appendix J to 10 CFR Part 50 respectively require that Types B and C containment local leak rate tests (LLRTs) be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years.

During the previous Calvert Cliffs Unit 2 refueling outage, the LLRT testing program was conducted for March 9 to June 4, 1987 with the first Types B and C tests completed on March 16, 1987. The current operating cycle (Cycle 8) was the first 24-month operating cycle at Calvert Cliffs Unit 2.

This cycle is scheduled to end with a Unit 2 shutdown on March 25, 1989. Consequently, the Unit 2 LLRTs would not all be performed within the required 2-year test interval unless the licensee chose to shut down prematurely and (1) reload the core without having fully utilized the soon-to-be discharged spent fuel or (2) perform the Types B and C tests and subsequently operate for an additional 9–10 days before refueling with the same Types B and C tests possibly repeated again during the upcoming refueling outage or during the following operating cycle. Therefore, the licensee has requested a temporary exemption from these requirements to permit an extension of up to 28 days for the performance of each individual Type B or C LLRT. This temporary exemption would expire upon reaching 199.9 °F average reactor coolant system (RCS) temperature during initial RCS heatup following the Unit 2 Cycle 9 refueling outage.

In the transformation from an 18-month to a 24-month operating cycle, the licensee has shown good faith in attempting to perform and comply with

all surveillance test that previously would have not needed to be performed until the next refueling outage. This good faith effort was exhibited by the licensee when it conducted an extensive mid-Cycle 8 Unit 2 outage that was initiated to perform 18-month refueling interval surveillance tests to ensure that their associated test intervals did not exceed the allowed periods. Unfortunately, the licensee, in analyzing its testing program to determine which surveillance needed mini-outage retesting, failed to note that the Types B and C LLRT retest intervals for certain containment penetrations and isolation values would exceed the maximum 2-year interval before the next refueling outage. This deficiency was not noted by the licensee until November 1988.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith effort to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, the licensee will not be able to comply with the maximum allowable retest interval for all Types B and C LLRTs without conducting an extensive, premature outage at Unit 2. This exemption provides only temporary relief from the applicable regulations.

As discussed in our Safety Evaluation, dated March 15, 1989, there are several reasons for concluding that this extension to the maximum 2-year Types B and C LLRT retest interval will not adversely affect protection of the public health and safety. First, this extention is a one-time occurrence spanning, at a maximum, only 28 days during which containment integrity could be necessary. It is more probable that containment integrity will be needed for only the first 10–14 days of this extension period. However, the full 28-day period represents an interval extension of less than 4% of the maximum allowable retest interval during which no significant further degradation of either the containment penetrations or of the containment isolation valves is likely. Second, this retest extension will not increase the possibility of events that require containment integrity, primarily the loss of coolant accident (LCOA). Finally, for this interval extension to significantly increase the consequences or size of a radiological release to the outside environment, a significant degradation of the containment boundary must occur during the 28-day extension followed by an event requiring containment integrity. As neither is probable during the 28-day extension, their sequential occurrence is quite unlikely.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in section III. Therefore, the Commission hereby grants the following exemption:

The Baltimore Gas and Electric Company is exempt from the requirements of sections III.D.2(a) and III.D.3 of Appendix J to 10 CFR Part 50, for performing Types B and C local leak rate retests on the Calvert Cliffs Unit 2 containment penetrations and isolation valves, in that the allowable retest interval for each individual Type B or C test may be extended to 2 years and 28 days vice the maximum 2-year interval specified in these sections. This exemption expires upon reaching 199.9°F average reactor coolant system (RCS) temperature during the initial RCS heatup following the Unit 2 Cycle 9 refueling outage. Upon expiration, the licensee shall comply with the provisions of these sections.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 10757).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 15th day of March 1989.

[FR Doc. 89–6713 Filed 3–21–89; 8:45 am]

BILLING CODE 7590–1–M

The Cleveland Electric Illuminating Co. et al.; Environmental Assessment and Finding of No Significant Impact

Docekt No. 50–440

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to the definition of Primary Containment Integrity-Shutdown to provide limited flexibility during performance of 10 CFR Part 50 Appendix J. Type C leak rate testing of containment isolation values to allow one (1) or two (2) ¾-inch vent and drain lines to be open on those penetrations that would otherwise not be testable when this specification is applicable.

The proposed action is in accordance with the licensees' application for amendment dated December 29, 1988.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide the licensees flexibility to perform Type C local lead rate tests required by 10 CFR Part 50 Appendix J. which would otherwise not be able to be performed when Primary Containment Integrity-Shutdown must be maintained. Performance of local leak rate testing activities when this specification is applicable has the potential to reduce outage durations by increasing the time available to perform this potential critical path testing acitvity and to permit additional time for isolation valve repair and retesting, if required, subsequent to initial testing and surveillance.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TS and concludes that the calculated offsite doses, assuming a postulated fuel handling accident while the two lines are open and using a 15-day decay time (minimum time between start of the refueling outage and conduct of Type C

local lead rate testing) are well within the dose reference values of 10 CFR Part 100 and are within the acceptance criteria given in Standard Review Plan Section 15.7.4. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact during the first refueling outage. Permanent TS changes using a 24-hour decay time which would be applicable to subsequent outages, will be the subject of future correspondence.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on January 19, 1989 (54 FR 2246). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the TS involves a change to surveillance and testing requirements, specifically with regard to maintaining containment integrity while moving fuel. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission conluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operaion and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements Related to Operation of Perry Nuclear Power Plant, Units 1 and 2, dated August 1987.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 29, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 15th day of March 1989.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III–3, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–6715 Filed 3–21–89; 8:45 am]

BILLING CODE 7590–10–M

[Docket Nos. 50–321, 50–366]

Georgia Power Co. et al; Edwin I. Hatch Nuclear Plant, Units 1 and 2, Exemption

I

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee), are the holders of Facility Operating Licenses Nos. DPR–57 and NPF–5, which authorize full power operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, respectively (the facility). The licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission.

The facility consists of two boiling water reactors at the licensee's site located in Appling County, Georgia.

II

10 CFR Part 20, Appendix A, "Protection Factors for Respirators," establishes protection factors of air-purifying respirators for protection against particulates only. Furthermore, footnote d–2(c) states, "No allowance is to be made for the use of sorbents against radioactive gases or vapors." This restriction was needed since an inadequate data base had existed for evaluating the complex interaction of many factors affecting the service life and removal efficiency of radioactive gases and vapors by sorbent canisters. Also, due to the lact of a data base, a NIOSH/MSHA certification schedule to ensure that canisters meet acceptable performance criteria has not been established.

10 CFR Part 20.103(e) allows authorization by the Commission in lieu of a NIOSH/MSHA certification schedule based on adequate testing, material and performance characteristics. An application by a licensee for this authorization must include a demonstration by testing, or on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use. The licensee made such an application.

10 CFR Part 20.501 allows an exemption to be granted by the Commission from the requirements of the regulations in 10 CFR Part 20 as it determines are authorized by law and will not result in undue hazard to life or property.

By letter dated October 25, 1988, as supplemented January 12, 1989, the licensee requested an exemption based on 10 CFR 20.501 to allow the use of MSA GMR–I canisters with a protection factor of 50 or greater for personnel respiratory protection against radioiodine and particles. The licensee cited research data, test results, test protocol and quality assurance controls that it stated satisfy the recommended qualification process of NUREG/CR–3403, "Criteria and Test Methods for Certifying Air-Purifying Respirator Cartridges and Canisters Against Radioiodine." The NRC staff evaluated the information provided by the licensee to support the exemption request. The NRC staff's safety evaluation on this matter relating to the use of MSA GMR–I canisters for protection against radioiodine at Hatch Units 1 and 2 has been issued. The safety evaluation concludes that the licensee's proposed use of MSA GMR–I canisters for radioiodine protection with certain usage restrictions and controls can result in significant dose savings over alternative methods while still providing effective protection.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.501, an exemption as requested by the licensee's letter of October 25, 1988, as supplemented January 12, 1989, is authorized by law and will not result in undue hazard to life or property. The Commission hereby grants an exemption from the restriction of 10 CFR Part 20, Appendix A, footnote d–2(c), and authorizes the use of the MSA–GMR–I canister, with restrictions as shown in Attachment 1 to this exemption. The exemption is subject to modification by rule, regulation or Order of the Commission.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (54 FR 11093).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of March 1989.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Acting Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

Attachment: Usage Restrictions.

Attachment 1 Limitations, Usage Restrictions, and Controls Applicable to the Use of MSA GMR–I Canister at the Edwin I. Hatch Nuclear Plant, Units 1 and 2

1. Protection factor equal to 50 as a maximum value.
2. The maximum permissible continuous use time is eight hours after which the canister will be discarded.
3. Canisters are not to be used in the presence of organic solvent vapors.
4. The allowable service life for sorbent canisters is to be calculated from the time of unsealing the canister, including periods of non-exposure.
5. Canister is to be used with a full facepiece capable of providing a fit factor equal to or greater than 500.
6. Canisters are not be used in total challenge concentrations of organic iodines and other halogenated compounds greater than 1ppm, including nonradioactive compounds.
7. Canisters are not to be used in environments where temperatures are greater than 110 °F, or up to 120 °F if the dewpoint is equal to or less than 107 °F.

In addition to the limitations and usage restrictions noted above, the following additional controls will be utilized by the licensee:

1. Temperatures will be measured prior to and/or during the use of GMR–I canisters to assure that work temperatures are within limits.
2. Air samples will be taken prior to and during any activities that involve the use of the GMR–I canister for protection against radioactive iodine.
3. A GMR–I canister found to have exceeded 3 years from date of manufacture will not be used for protection against radioactive iodine.
4. In the initial implementation of the GMR–I program, the following verification measures will be in effect:

a. Whole body counts for individuals using the GMR–I canisters for radioiodine protection will be performed at the end of each job.

b. A whole body count for individuals that exceed 10 MPC in any 7-day period and who used the GMR–I canister for respiratory protection in that period;

c. Anyone that measures 70 nCI or greater iodine uptake to the thyroid during a whole body count will be restricted from entering a radioiodine atmosphere pending Health Physics evaluation;

d. The radiological survey and whole body count information will be compiled to evaluate the effectiveness of the program.

[FR Doc. 89–6714 Filed 3–21–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Instrumentation and Control Systems; Meeting

The ACRS Subcommittee on Instrumentation and Control Systems will hold a meeting on April 5, 1989, Room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 5, 1989—1:00 p.m. until the conclusion of business

The Subcommittee will review the proposed resolution of Generic Issue 115, "Enhancement of Reliability of Westinghouse Solid State Protection Systems."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: March 16, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–6717 Filed 3–21–89; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 25 through March 10, 1989. The last biweekly notice was published on March 8, 1989 (54 FR 9912).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 21, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request: January 12, 1989

Description of amendment request: The proposed amendment would revise the PVNGS Technical Specifications (TS) with respect to Shutdown Margin (Figure 3.1-1A and Tables 3.1-2, 3.1-3 and 3.1-5), Control Element Assembly (CEA) Insertion Limits (Figures 3.1-3 and 3.1-4), Azimuthal Power Tilt Allowance (Figure 3.2-1A), and Departure from Nucleate Boiling Ratio (DNBR) Margin (Figures 3.2-2 and 3.2-2A) to maintain consistency between the Technical Specifications and the safety analysis performed for the Unit 1, Cycle 3 core design.

More specifically, the proposed changes regarding Shutdown Margin involve the revision of TS Figure 3.1-1A and Tables 3.1-2, 3.1-3 and 3.1-5. Figure 3.1-1A provides shutdown margin requirements versus RCS cold leg temperature for the case where any full-length CEA is withdrawn. Tables 3.1-2, 3.1-3 and 3.1-5 provide required boron monitoring frequencies in the event that one or both startup channel high neutron flux alarms are inoperable. The proposed revisions are required to reflect cycle specific requirements. The revisions result in more restrictive operating limits.

The proposed changes regarding Control Rod Insertion Limits would revise TS Figures 3.1-3 and 3.1-4. These figures provide regulating group CEA insertion limits. Figure 3.1-3 provides CEA insertion limits when the Core Operating Limit Supervisory System (COLSS) is in service and Figure 3.1-4 provides the insertion limits when COLSS is out of service. The following two changes are proposed: (i) The proposed revised Figure 3.1-3 (COLSS in service) would not permit insertion of regulating group 3 CEAs above 20 percent of rated thermal power. This is more restrictive than the current specification which does allow for regulating group 3 insertion above 20 percent of rated thermal power. (ii) The proposed revised Figure 3.1-4 (COLSS out of service) would permit slightly increased insertion of regulating group 3 CEAs between 15 percent and 20 percent of rated thermal power.

The proposed change regarding Azimuthal Power Tilt would revise TS Figure 3.2-1A. This figure provides azimuthal power tilt limits versus core power for COLSS in service. The azimuthal power tilt allowance would be increased from 10 percent for operation below 40 percent of rated thermal power.

The proposed changes regarding DNBR margin would revise TS Figure 3.2-2 and 3.2-2A. These figures provide DNBR margin limits for various configurations of COLSS and CEA Calculators (CEACs) inoperable. The changes are necessary to ensure that the Technical Specifications are consistent with the safety analyses performed for the Cycle 3 core design.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against these standards and has provided the following discussion:

Shutdown Margin

Standard 1 — Involve a significant increase in the probability or consequences of an accident previously evaluated.

Basis — The proposed Technical Specifications changes are required to make the Technical Specifications consistent with the Cycle 3 safety analyses. Figure 3.1-1A provides shutdown margin requirements versus RCS cold leg temperatures when any full-length CEA is withdrawn. For operation below a RCS cold leg temperature of 350 [degrees] F, the shutdown margin must be increased from 3.5 to 4.0% delta K/K. This ensures that the consequences of [design basis events] DBEs and AOOs [abnormal operating occurrences] remain bounded by the reference cycle....In conclusion, the proposed changes do not affect the probability of occurrence of any previously analyzed events. Additionally, the proposed changes ensure that the consequences of previously analyzed events will be no greater than the reference cycle.

Standard 2 — Create the possibility of a new or different kind of accident from any accident previously evaluated.

Basis — The proposed changes to [TS] Figure 3.1-1A and Tables 3.1-2, 3.1-3 and 3.1-5 are required to make the Technical Specifications consistent with the Cycle 3 safety analyses. The changes will not create the possibility of a new or different kind of accident from any accident previously analyzed. The changes ensure that the results of DBEs and AOOs are bounded by the reference cycle analyses.

Standard 3 — Involve a significant reduction in a margin of safety.

Basis — The bases section for Limiting Condition for Operation (LCO) 3.1.1.2 states that the shutdown margin limits of Figure 3.1-1A are necessary to ensure that the reactor remains subcritical following a DBE or AOO. With the proposed change to Figure 3.1-1A, the Cycle 3 safety analyses ensure that the results of DBEs and AOOs are bounded by the reference cycle analyses. The bases section for LCO 3.1.2.7 states that the boron monitoring frequencies ensure that boron dilution events will be detected with sufficient time for the operator to terminate the event before complete loss of shutdown margin. The revised monitoring frequencies of [TS] Tables 3.1-2, 3.1-3 and 3.1-5 ensure that the time criteria for these actions will be consistent with the reference cycle. Therefore, the margin of safety, as defined in the bases sections of the Technical Specifications, will be maintained.

CEA Insertion Limits

Standard 1 — Involve a significant increase in the probability or consequences of an accident previously evaluated.

Basis — TS Figures 3.1-3 and 3.1-4 will be updated to be consistent with the Cycle 3 safety analyses. The probability and/or consequences of an accident previously evaluated in the [Final Safety Analysis Report] FSAR will not increase because the results of the Cycle 3 safety analyses, using the revised CEA insertion limits of Figures 3.1-3 and 3.1-4, assure that there is sufficient margin for the most limiting DBE. The analyses performed include an evaluation of all safety analyses for which the CEA insertion limit curves serve as an initial condition. Therefore, the proposed Technical Specifications changes will not increase the probability or consequences of any accidents previously evaluated.

Standard 2 — Create the possibility of a new or different kind of accident from any accident previously evaluated.

Basis — The proposed changes are required to make the Technical Specifications consistent with Cycle 3 safety analyses. There have been no hardware changes involving equipment important to safety as a result of the proposed changes. Therefore, the possibility of an accident of a different type than any evaluated previously in FSAR will not be created.

Standard 3 — Involve a significant reduction in a margin of safety.

Basis — The changes to the transient insertion limit lines of [TS] Figures 3.1-3 and 3.1-4 are required to make the Technical specifications consistent with the Cycle 3 safety analyses. Operation of the reactor in accordance with the revised transient insertion limits will ensure that the Specified Acceptable Fuel Design Limits (SAFDLs) are not exceeded during the most limiting Anticipated Operational Occurrence (AOO). The Cycle 3 limits are based on the same design criteria as the Cycle 2 limits. Therefore, the margin of safety will not be reduced as a result of the proposed changes.

Azimuthal Power Tilt

Standard 1 — Involve a significant increase in the probability or consequences of an accident previously evaluated.

Basis — The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated since the results of the Unit 1, Cycle 3 analyses incorporate the higher azimuthal tilt values at low power (with COLSS in service). This assures that there is sufficient margin in the safety analyses for the most limiting DBE.

Physics calculations were performed to verify that the results of the Cycle 3 analysis, using the azimuthal power tilt limits proposed in Figure 3.2-1A with COLSS in service, were bounded by the reference cycle analysis. In particular, all events which use an explicit value for azimuthal power tilt in the calculation (i.e., the CEA ejection, single full length CEA withdrawal, and single part length CEA drop events) were reanalyzed with the new higher azimuthal power tilt limits. For the remaining DBEs, there is sufficient conservatism in the assumptions made for the initial conditions (from which the events are started) to account for the increased azimuthal power tilt allowed by the proposed Technical Specification change below 40% power. Above 40% power, the proposed figure is identical to the reference cycle and is therefore bounded by that analysis.

Standard 2 — Create the possibility of a new or different kind of accident from any accident previously evaluated.

Basis — The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed Technical Specification amendment only changes the azimuthal power tilt limits at low power levels (below 40% power), and does not modify any plant equipment or operating procedures. The relaxation of the azimuthal power tilt limit for Unit 1 allows the operators to better mitigate xenon transients below 40% power. Therefore, the possibility of a new or different kind of accident will not be created.

Standard 3 — Involve a significant reduction in a margin of safety.

Basis — The proposed change will not involve a significant reduction in a margin of safety since the results of the analyses assuming the higher azimuthal tilt values assure that there is sufficient margin for the most limiting DBE. Therefore, the margin of safety will not be reduced.

DNBR Margin

Standard 1 — Involve a significant increase in the probability or consequences of an accident previously evaluated.

Basis — The proposed revisions to Technical Specification Figures 3.2-2 and 3.2-2A will not increase the probability or consequences of an accident previously evaluated. Figures 3.2-2 and 3.2-2A must be updated to be consistent with Cycle 3 safety analyses.

a. The Cycle 3 safety analyses have shown that when COLSS is in service and at least one CEAC is operable, Technical Specification 3.2.4a provides adequate margin to DNB to accommodate the most limiting AOO without violating the SAFDLs.

b. The proposed revision to [TS] Figure 3.2-2 accounts for the situation where COLSS is out of service and at least one CEAC is operable. In this case the Cycle 3 safety analyses have shown that by maintaining the [Core Protection Calculator] CPC calculated DNBR above the value shown in the revised figure, the limiting AOO will not result in a violation of the SAFDLs.

c. When COLSS and both CEACs are out of service, there must be additional margin in the initial CPC DNBR value to ensure that the limiting AOO will not result in exceeding a SAFDL. The evaluation of the Cycle 3 core design has shown that by maintaining the CPC calculated DNBR above the limits shown in Figure 3.2-2A, the SAFDLs will not be exceeded during the most limiting AOO.

Standard 2 — Create the possibility of a new or different kind of accident from any accident previously evaluated.

Basis — The revisions to TS Figures 3.2-2 and 3.2-2A are required to make the Technical Specifications consistent with the Cycle 3 safety analyses. Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously analyzed.

Standard 3 — Involve a significant reduction in a margin of safety

Basis — The changes in the content of TS Figures 3.2-2 and 3.2-2A are required to make the TS consistent with the Cycle 3 safety analyses. Operation of the reactor within the limits of the revised figures will ensure that the SAFDLs are not exceeded during the most limiting AOO. The Cycle 3 figures were based on the same design criteria as the Cycle 2 figures. Therefore, the margin of safety will not be reduced as a result of the proposed changes.

The staff has reviewed the licensees' no significant hazards analysis and concurs with their conclusions. As such, we propose to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: December 2, 1986, November 17, 1987, October 12, 1988 and January 24, 1989.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Haddam Neck Plant to reflect recent changes to that regulation. The amendment would modify paragraphs 2.C.(5), (6) and (7) of Facility Operating License DPR-61 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, as supplemented on November 17, 1987, October 12, 1988 and January 24, 1989, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards consideration is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 29, 1988

Description of amendment request: The proposed amendment would change Technical Specification 3.3.F. dealing with the Service Water System as follows:

1. Three service water system pumps with their associated piping and valves would be required operable on the designated essential header when the reactor is above 350° F as opposed to the current requirement of three pumps with associated piping and valves being required operable when the reactor is critical.

2. The current allowable-out-of-service time of 8 hours for one of the three service water pumps on the designated essential header or any of the associated piping or valves would be changed to 12 hours. A requirement would also be added for the reactor to be in hot shutdown within the next 6 hours and in cold shutdown within the next 30 hours if the service water system is not restored to operable status during the allowable-out-of-service time. The current technical specification does not provide a time limit for achieving cold shutdown.

3. A Limiting Condition for Operation (LCO) requiring the operability of two service water pumps with associated piping and valves on the designated non-essential header when the reactor is above 350° F would be added. Provisions would also be added specifying that with one of these two pumps or any of the associated piping or valves inoperable, both pumps and the associated piping and valves shall be restored to operable status within 24 hours or the reactor shall be in hot shutdown within the next 6 hours and in cold shutdown within the next 30 hours.

4. A LCO would be added specifying the isolation requirements between the essential and non-essential headers of the service water system. Isolation between these two headers would be required at all times when the reactor is above 350° F except for periods of up to 8 hours when the headers may be connected to facilitate safety-related activities. The current technical specification does not require isolation between the essential and non-essential headers.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee provided the following analysis of the proposed changes:

In accordance with the requirements of 10 CFR 50.92, the proposed Technical Specification changes are deemed to involve no significant hazards considerations because operation of Indian Point Unit No. 2 in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to require three designated essential service water pumps be operable when the reactor is above 350° F is more restrictive than the existing Technical Specification requirement of operability prior to criticality. This change is consistent with previous accident analyses and supports a current administrative requirement.

Concerning the proposed increase in designated essential service water pump out-of-service time, the inoperability of a service water pump, no matter how long the outage time, has no relationship to the probability of an accident occurring. Once an accident occurs, the increased time could affect the consequences of the accident. However, since alternate systems for the components supplied by the essential service water system are available and are not themselves supplied by the essential service water system, this is unlikely. Additionally, by increasing the service water pump out-of-service time, on-line maintenance could more readily be performed, which should enhance overall pump and system availability and reduce cycling of the unit. Thus, the same safety criteria as previously evaluated are still met with the proposed change. The allowance of an additional 4 hours out-of-service time for the essential service water pumps is still more restrictive than the allowed out-of-service times for the components it serves, such as fan cooler-charcoal filter units (FCUs).

The addition of a time period to attain hot shutdown and the establishment of a time period for attaining cold shutdown if the designated essential service water pump LCO cannot be satisfied are new requirements. Current Technical Specifications require placing the reactor in cold shutdown and a time period is not specified. The proposed 6 hour time period to achieve hot shutdown and the 30 hour time period to attain cold shutdown are consistent with the times actually required to achieve these modes in a controlled manner, and, are not unlike the requirement imposed for similar systems out-of-service in excess of their LCO by existing Technical Specification 3.0.1.

One of proposed changes to Technical Specification 3.3.F (Service Water System) adds the requirement for two service water pumps on the designated non-essential header, together with their associated piping and valves, to be operable when the reactor is above 350° F. During the recirculation phase of a loss-of-coolant accident (LOCA), one component cooling water (CCW) pump is required to provide minimum safeguards. As discussed in the Basis for Technical Specification 3.3 and in Section 9.6.1.2 of the FSAR, one service water pump on the non-essential header is required to supply the minimum cooling water requirements for the CCW system. This change merely adds a LCO to ensure the availability of one non-essential service water pump to fulfill its function during a LOCA. A minimum of two service water pumps are required to be operable to satisfy single failure criteria. A 24 hour out-of-service time with only one non-essential pump operable is acceptable since the safety-related equipment it serves, the component cooling water pumps, are allowed the same outage time by Technical Specification 3.3.E. The proposed 36 hour time period, 6 hours to achieve hot shutdown and 30 hours to achieve cold shutdown if the LCO cannot be satisfied, is consistent with the time required to attain these modes in a controlled manner. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated, but supports the requirements of an accident previously evaluated.

Header interconnection is allowed under the current specification and is only addressed separately in the new format for this specification. Since no change to the system or its operation is involved, there is no impact on the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the operability requirements for the designated essential service water pumps (extension of allowed outage time, operability required prior to 350° F, 36 hours to attain cold shutdown) do not alter plant configuration or operation from that assumed in current analyses which bound those for IP-2. A longer time of inoperability for this system does not change the nature of the accidents for which this engineered safeguard has been installed. Since no change to the system or its operation is involved, there is no potential for a new or different kind of accident from any previously evaluated.

The addition of the non-essential service water header LCO ensures that the minimum equipment required to mitigate the consequences of a LOCA is operable when required. It does not affect the design basis as described in the FSAR, but is part of the design basis for a previously evaluated accident.

Since interconnection of the essential and non-essential headers is allowed under the current essential service water specification, and, no change to the system or its operation is involved, there is no potential for a new or

different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

Requiring operability of the designated essential service water pumps when the reactor is above 350° F imposes a more restrictive limit than the current one of criticality. Since heat removal requirements lessen as reactor coolant temperature decreases, the change will increase margin of safety with regard to heat removal ability. Adding a time period to attain hot shutdown and imposing a definite time limit for attaining cold shutdown when the LCO cannot be met are also more restrictive than the existing requirement and will also increase margin of safety with regard to improving the ability to remove heat.

The service water system is comprised of six pumps that supply two separate headers, each header being supplied by three pumps. Either of the headers can be designated to supply the essential loads, those which must have an assured supply of cooling water in the event of a loss of offsite power and/or loss-of-coolant accident, and the essential loads can be transferred to the non-essential header and vice versa by manual valve operation. This ability to exchange headers results in an alternate essential service water system, in most instances. Also, the safety function of the designated essential service water pumps is to supply cooling water to the FCUs, the FCU motor coolers and the Emergency Diesel Generators (EDGs). Current Technical Specifications on these equipment allow out-of-service times of 7 days for an inoperable component, provided alternate systems are operable. The alternate system for the FCUs are the containment spray pumps, and the 138 kv and 13.8 kv sources of offsite power are alternate supplies for the EDGs. These alternate systems do not require service water cooling. Therefore, due to the existence of these alternate systems and components, which would serve to mitigate the temporary inoperability of a pump, there is not a significant reduction in a margin of safety to increase the out-of-service time from 8 hours to 12 hours for an essential service water pump.

Previous accident analyses require non-essential service water to supply the component cooling heat exchangers. The proposed addition of an non-essential service water pump LCO in accordance with the design basis as described in the FSAR does not reduce nor change any margin of safety from those existing now.

Placing the existing requirement for interconnection of the essential and non-essential headers in a separate subsection of the service water specification has no impact on a margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether "Significant Hazards Considerations" exist by providing examples in 51 FR 7751. Example (ii) of the Commission's Examples of Amendments That Are Considered Not Likely To Involve Significant Hazards Considerations relates to "a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications." In this case, the proposed changes to include a non-essential service water header LCO, to require essential service water header operability prior to 350° F, and, to add a time period to attain hot shutdown and to impose a time limit to attain cold shutdown when the essential service water header LCO is not satisfied, are similar to Example (ii) since the limitations are not currently in the Technical Specifications.

Example (iii) of the Commission's Examples of Amendments That Are Considered Likely To Involve Significant Hazards Considerations relates to a change that involves "a significant relaxation in limiting conditions for operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety...". As discussed under requirement 3 above, the relaxation in the essential service water header LCO to allow the inoperability of one pump for 12 hours instead of the current 8 hours is amply compensated for by the existence of alternate systems and components. Therefore, this change will not involve any "Significant Hazards Considerations".

Therefore, since the application for amendment satisfies the criteria specified in 10 CFR 50.92, is similar to examples for which "No Significant Hazards Considerations" exist, and does not meet the criteria for examples for which "Significant Hazards Considerations" exist, the licensee has determined the application involves "No Significant Hazards Considerations".

The staff does not fully agree with some of the details of the licensee's analysis as it applies to the new LCO dealing with the interconnection of headers. The staff agrees that the existing technical specifications permit interconnection of the essential and non-essential headers. However, the proposed amendment would add an LCO requiring the essential header be isolated from the non-essential header at all times when the reactor is above 350° F except for a period of up to 8 hours when the headers may be connected to facilitate safety-related activities. The addition of this new LCO constitutes an additional limitation, restriction, or control not presently in the technical specifications rather than simply having isolation of these headers addressed separately in a new format for this specification. The staff notes that the addition of this LCO matches example (ii) of the Commission's Example of Amendments that Are Considered Not Likely To Involve Significant Hazards Considerations. Therefore, based on the licensee's analysis as supplemented by the staff's analysis for adding the LCO dealing with the interconnection of headers, the staff proposes that the proposed amendment will not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Liberty, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment requests: February 21, 1989

Description of amendment requests: These amendments are submitted to implement the NRC recommendations of Generic Letter (GL) 85-19, "Reporting Requirements on Primary Coolant Iodine Spikes." In GL 85-19, the staff determined that the primary coolant iodine spike reporting requirement could be reduced from a short-term report (e.g., Special Report or Licensee Event Report) to an item which is included in the Annual Report. Additionally, the staff determined that the existing requirements to shut down a plant if coolant iodine activity limits are exceeded for 800 hours in a 12-month period can be eliminated. The St. Lucie Units 1 and 2 Technical Specifications 3.4.8, and Bases for these Technical Specifications, are proposed to be revised.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria.

Criterion 1

The NRC Staff has previously evaluated this change in Generic Letter 85-19, "Reporting Requirements on Primary Coolant Iodine Spikes", and determined that the special reporting requirements related to primary coolant iodine spikes are unnecessary.

It has been determined by the NRC that the reporting requirements for iodine spiking can be reduced from a short-term report (Special

Report or Licensee Event Report) to an item which is to be included in the Annual Report. The information to be included in the Annual Report is similar to that previously required in the Licensee Event Report but has been changed to more clearly designate the results to be included from the specific activity analysis and to delete the information regarding fuel burnup by core region.

The NRC has also determined that the existing requirements to shut down a plant if coolant iodine activity limits are exceeded for 800 hours in a 12-month period can be eliminated. The quality of nuclear fuel has been greatly improved over the past decade with the result that normal coolant iodine activity (i.e. in the absence of iodine spiking) is well below the limit. Appropriate actions would be initiated long before accumulating 800 hours above the iodine activity limit. In addition, 10 CFR 50.72(b)(1)(ii) requires the NRC to be immediately notified of fuel cladding failures that exceed expected values or that are caused by unexpected factors. Therefore, this Technical Specification limit is no longer considered necessary on the basis that proper fuel management by licensees and existing reporting requirements should preclude ever approaching the limit.

The changes do not affect assumptions contained in plant safety analyses, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

Criterion 2

The NRC has previously evaluated this change in Generic Letter 85-19 and determined that it results in deleting unnecessary reporting requirements. Additionally, the Technical Specification requiring reactor shutdown is no longer considered necessary on the basis that proper fuel management by licensees and existing reporting requirements in the Code of Federal Regulations should preclude ever approaching the limit. This change deletes reporting requirements and unnecessary shutdown requirements.

A new or different kind of accident is not created since Technical Specification limits on primary coolant specific activity remain unchanged.

Criterion 3

The changes being proposed by FPL do not relate to or modify the safety margins defined in and maintained by the Technical Specifications. Therefore, the proposed changes would not involve any reduction in a margin of safety.

Based on the above, [the Florida Power & Light Company has] determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: July 25, 1986 (TSCR 126) as revised February 19, 1988 and supplemented October 13, 1988, November 16, 1988 and January 12, 1989. The July 25, 1986 submittal was published in the **Federal Register** on August 13, 1986 (51 FR 29023)

Description of amendment request: The proposed amendment changes Technical Specification 3.5.A.3 and 4.5 regarding containment integrated leak rate testing to reflect compliance with Appendix J to 10 CFR 50. Specifically the major changes are as follows:

Section 3.5.A - The licensee has added step 3.4.A.3.b to 3.5.A.3 to create an additional limiting condition for operation (LCO) concerning drywell operability per TS Section 4.5.E.

Section 4.5 - The licensee has modified the applicability and objectives paragraphs to list the major system surveillances and tests described in this section and to refer to Appendix J of 10 CFR 50 for containment leakage valves.

Section 4.5.A - Type A Primary Containment Integrated Leak Rate Test (PCILRT) - The licensee has deleted pre-operational testing from Step 1 as it applies to initial (pre-startup) testing of the containment. The licensee has also modified Step 2 and 3. Part of Step 2 and Step 3 are moved to Section 4.5.C. Step 4 has remained essentially intact and renumbered as Step 2.

Section 4.5.B Acceptance Criteria - Step 1 for maximum allowable leak rate remains essentially unchanged with minor subscript changes to parallel variables used in Appendix J. Step 2 and Step 3 are modified to reflect the applicable standard.

The licensee has added Step 4 to establish an acceptance criteria for verification test in accordance with Section III.A.3(b) of Appendix J.

Section 4.5.C Corrective Action - The licensee has changed this section to give detailed options as to what may be done to limit leakage during the PCILRT. Step 1.a allows for repairs and local testing of the repairs. It also allows for the recommencement of the PCILRT without the required stabilization period if the containment was not depressurized.

Step 1.b is essentially unchanged. Step 2 is deleted.

Section 4.5.D Frequency - The licensee has deleted the first section concerning testing during the first refueling as no longer relevant. The remainder of this section is modified to reflect the testing frequency of three times within each ten year service period as imposed by Appendix J, Section III.D.1(a) and for two consecutive periodic Type A tests as imposed by Section III.A.6(b).

Section 4.5.E-Type "B" and "C" Local Leak Rate Tests (LLRT) - Steps 1, 3 and 4 are taken apart and rearranged as Steps 1 through 4 with the addition of a requirement to use normal valve closures.

The licensee has rearranged Step 2 and Step 5 and expanded it to define operability of the drywell airlock.

4.5.F Acceptance Criteria - The heading of this section is changed from "Corrective Action" to "Acceptance Criteria".

Step 1 establishes the acceptance limits of combined leakage rate of potential flow paths subject to type B and type C tests according to Appendix J, Section III.B.3 and C.3.

Step 2 maintains the established leakage rate limits for MSIVs at Oyster Creek.

Step 3 establishes the acceptance limit of drywell airlock leakage not to exceed 5% of the allowable leakage rate (1a) as measured or adjusted to Pa.

Step 4 includes the approved method for adjusting the drywell airlock leakage rate when tested at 10 psig per staff evaluation dated March 4, 1982 pursuant to PER-C5257-36 "Containment Leakage Rate Testing".

Section 4.5.G Frequency - The original specification 4.5.G is moved to 4.5.H. The licensee has added new specification 4.5.G which states that the local leak rate tests shall in no case exceed an interval of 24 months.

Section 4.5.H, I, J, K and L - The licensee has renumbered 4.5.G, H, I, J, and K in the present specification to 4.5.H, I, J, K and L in the proposed specification. Present specification L which shows deleted is omitted in the proposed revision. The licensee has also corrected some typographical errors in Sections 4.5.5.4.b, 4.5.5.5.b(3) and 4.5.Q.1.a.

Section 4.5. Basis - The licensee has revised Section 4.5 basis to eliminate reference to the preoperational

containment test pressures as no longer applicable.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards of 10 CFR 50.92 for determining whether a significant hazards consideration exists by providing certain examples as discussed in the **Federal Register** on March 6, 1986 (51 FR 7751) under the heading "Examples of Amendment That Are Considered Not Likely to Involve Significant Hazards Considerations." Example (i) relates to a purely administrative change to Technical Specifications: i.e., a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nonenclature. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; i.e., a more stringent surveillance requirement. Example (vii) relates to a change to make a license conform to changes in the regulations, when the license change results in very minor changes to facility operations clearly in keeping with the regulations.

In this case, each component of the proposed change described above is similar to at least one of the three examples. The change in the numbering scheme is clearly an administrative change as described in example (i). The addition of Specification 3.5.A.3b is consistent with both examples (ii) and (vii). The modifications and additions made to Specifications 4.5.A through 4.5.G also relate easily to example (ii) in that a more stringent and comprehensive surveillance requirement is established. Example (vii) also relates in that the surveillance program, in the form presented in this proposal, is defined by a regulation to which the licensee is conforming to by the proposed amendment.

In addition, proposed modification to the Technical Specifications will not involve a significant hazards consideration because operation of Oyster Creek Nuclear Generating Station in accordance with this change would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. This change merely redefines the leak rate testing program for Primary Containment. This program is designed to ensure that the Primary Containment is able to perform its design function. That function is to contain the energy and the radioactive release of the design basis loss of coolant accident. Therefore, this change cannot increase the probability or consequences of an accident previously evaluated.

(2) create the possibility of a new or different kind of accident from any previously analyzed. It has been determined that, because this revision more clearly establishes the requirements and methods of testing the Primary Containment integrity and does not involve a change to the containment configuration, this change will not create the possibility of a new or different kind of accident from any previously evaluated.

(3) involve a significant reduction in a margin of safety. This change has increased the requirements as established in Appendix J that the primary containment must meet to be considered operable. Therefore, this change will not reduce the margin of safety.

This change reflects the requirements of Appendix J to 10 CFR Part 50.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: February 3, 1989

Description of amendment request: This amendment request would change the Moderator Temperature Coefficient (MTC) limit in Technical Specifications between the 0% and 30% power levels. Between these two power levels the current limit is a constant 0.5E-4 delta rho per ° F. The requested limit is a line from 0.6E-4 delta rho per ° F at 0% power to the current limit of 0.5 E-4 delta rho per ° F at 30% power. The MTC limit above 30% power is unchanged.

Operation with a positive MTC occurs from initial core power escalation conditions up to approximately 50% power at Beginning of Cycle (BOC) conditions only. Historically, positive MTC operation at Maine Yankee has been minimal, averaging less than ten days per cycle or six and one half days per year.

The history of measured MTCs at BOC for the limiting Hot-Zero-Power (HZP) condition is shown in Figure 2 relative to the proposed Technical Specification limit at HZP. The MTC at other times of the operating cycle has been shown to be non-limiting. There has been no noticeable trend towards more positive MTC in recent cycles, and none is planned with the current (and projected) 18-month, three-batch fuel management.

The proposed change provides additional refueling outage schedule flexibility without the need for rodded operation to meet MTC limits. Rodded core power escalation is undesirable since:

- Control rods are reserved primarily for symmetric offset control,
- Rodded operation results in higher power peaking, and, therefore, lower power escalation rates, and
- Rod motion results in large local power density changes which can lead to fuel failures in fuel which is not preconditioned.

The proposed change will provide additional refueling outage schedule flexibility without the need for rodded operation to meet MTC limits. Rodded core power escalation is undesirable since:

- Control rods are reserved primarily for symmetric offset control,
- Rodded operation results in higher power peaking, and, therefore, lower power escalation rates, and
- Rod motion results in large local power density changes which can lead to fuel failures in fuel which is not preconditioned.

The proposed change will provide flexibility by defining the allowable MTC limits for startup of future cycles.

Basis for proposed no significant hazards consideration: The proposed change to Technical Specification to increase the allowable measured MTC between the 0% and 30% power levels has been evaluated against the standards of 10 CFR 50.92 and has been determined to not involve a significant hazards consideration. This proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. Operation of the plant with a more positive allowable MTC between 0% and 30% power does not increase the probability of any FSAR event previously analyzed. The increase in MTC between 0% and 30% power has an insignificant effect on the CEA Ejection analysis at zero power, causing a minor increase in the peak radial average fuel enthalpy predicted. Fuel failures are not predicted to occur during this transient. All other analyses are unaffected by the change. Operation in the power level range covered by this proposed change has historically been only six and one half days per year. Because Maine Yankee has demonstrated a minimization of

operation in the region influenced by the proposed change, the probability of an accident occurring during this time has not changed. Therefore, the proposed change does not increase the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously evaluated. Increasing the allowable MTC between 0% and 30% power does not increase the possibility of a new or different kind of accident from any events previous evaluated. The change simply allows additional early shutdown flexibility at the end of each operating cycle.

3. Involve a significant reduction in a margin of safety. Increasing the allowable MTC between 0% and 30% power does not involve a significant reduction in a margin of safety for any event. The margin of safety for the CEA ejection event will not be reduced since the predicted radiological releases remain below the limits imposed by 10 CFR Part 100. With the proposed change in effect, the calculated margin to the peak radial average fuel enthalpy threshold of 200 cal/gm is well below the threshold. This margin is sufficient to ensure that the limits of 10 CFR Part 100 will not be violated. As stated above, the only effect of this proposed change is an insignificant impact on the CEA Ejection analysis results at zero power, resulting in a minor increase in the peak radial average fuel enthalpy predicted; however, no fuel damage is predicted. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The Commission has concluded that the proposed changes to the Technical Specifications do not involve a significant hazards consideration as defined by 10 CFR 50.92.

Local Public Document Room location: Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

Attorney for licensee: J. A. Ritsher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: R. Wessman

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: February 15, 1989

Description of amendment request: The final design and accuracy evaluation of the Inadequate Core Cooling Instrumentation (ICCI) System was described to the NRC in a letter dated March 28, 1988. The NRC determined, in the July 7, 1988 Safety Evaluation, that the Maine Yankee ICCI System complies with the requirements of Item II.F.2 of NUREG-0737. This proposed change adds two ICCI subsystems - the Primary Inventory Trend System (PITS) and the Core Exit Thermocouple (CET) System - to the Technical Specifications as required by NUREG-0737. The third ICCI subsystem - the Saturation Martin Monitor (SMM), is already included in the Technical Specifications. The upgrade to the PITS was completed during the October-December 1988 refueling outage.

Two minor editorial changes are also proposed in Tables 3.9-3 and 4.1-3 of the Technical Specifications:

(1) "Auxiliary Feedwater Flow Rate" has been changed to "Emergency Feedwater Flow Rate" to reflect proper system nomenclature.

(2) "Reactor Coolant System Subcooling Margin Monitor" has been changed to "Reactor Coolant System Saturation Margin Monitor" for consistency with design basis documents.

Basis for proposed no significant hazards consideration: The licensee has submitted the following no significant hazards consideration:

The proposed changes described herein have been evaluated against the standards in 10 CFR 50.92 and it has been determined that operation of the facility in accordance with the proposed amendment would not involve a significant hazards consideration. These proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The PITS is designed to indicate collapsed liquid level in the reactor vessel during a small break incident after the reactor coolant pumps (RCPs) are shut off. The PITS provides no automatic actuation or control functions and, therefore, will not impact the probability of previously analyzed accidents. Incorporation of the PITS into the Technical Specifications may decrease the consequences of certain accidents previously analyzed by implementing instrumentation designed to provide additional information to the operator to detect the approach and to aid in the response to inadequate core cooling conditions.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change involves specifying the operability and surveillance requirements for existing and redesigned accident monitoring instrumentation and, therefore, does not create the possibility of any new or different kind of accident.

3. Involve a significant reduction in a margin of safety.

Inclusion of operability and surveillance requirements for PITS and CETS in the Technical Specifications may increase the margin of safety by providing reasonable assurance that the instrumentation available to be used by operators in responding to and assessing recovery actions to certain accidents and abnormal conditions are periodically maintained and operable for specified operating modes.

The licensee has concluded that the proposed changes to the Technical Specifications do not involve a significant hazards consideration as defined by 10 CFR 50.92. The Commission agrees with the licensee's conclusion.

Local Public Document Room location: Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

Attorney for licensee: J. A. Ritsher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: R. Wessman

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 6, 1989, and supplemented on February 28, 1989.

Description of amendment request: This proposed amendment would revise the Technical Specifications (TS) to incorporate a general requirements section on the applicability of surveillance requirements at the beginning of Section 3.0. The proposed change would make the Fort Calhoun Station TS closer to the Standard Technical Specification in this area. Specifically, the proposed changes would provide the following provisions:

a. A 25% extension for surveillance intervals, but the total interval for three consecutive intervals shall not exceed 3.25 times the specified interval.

b. The defining of the regular surveillance intervals.

c. A 25% extension applicable to all codes and standards referenced within.

d. The delaying of an action statement for up to 24 hours to permit the completion of the surveillance when the allowable outage time limit of the action requirement is less than 24 hours.

e. The elimination of the need to perform surveillance on inoperable equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists

as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application.

With regard to the three standards, the licensee states that operation of the facility in accordance with this amendment would not involve a significant hazard for the following reasons:

(a) This Amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is a change to achieve consistency throughout Section 3 of the Technical Specifications. This change is not deemed significant, because it incorporates guidance provided by Generic Letter 87-09.

(b) This Amendment does not create the possibility of a new or different kind of accident from any previously evaluated. This is a purely administrative change to the Technical Specifications, it does not alter the manner in which equipment is operated and does not eliminate any surveillance required by the Technical Specifications.

(c) This Amendment will not cause a significant reduction in the margin of safety. Providing clarification for the applicability of Surveillance requirements does not change the method of operation and, therefore, does not reduce the margin of safety. This amendment, based on Generic Letter 87-09, is consistent with the recommendations of NUREG-1024, "Technical Specifications - Enhancing the Safety Impact" and the Commissions Policy Statement on Technical Specification Improvements.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis. Accordingly, the staff proposes to determine that the proposed changes to the Technical Specification do not involve a significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 2, 1989

Description of amendment request: Increase the surveillance interval of A and D Emergency Diesel Generators by two months.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92 the licensee has reviewed the proposed changes and has concluded as follows that they do not involve a significant hazards consideration:

Significant Hazards Consideration Evaluation

The proposed change to the (Hope Creek Generating Station) HCGS Technical Specifications:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The primary issue of concern is the ability of both the A and D EDGs to remain operational during the period of time beyond the current expiration date for the 18 month overhaul, August 19 and August 27, 1989 respectively, and the requested extension date, October 15, 1989. As discussed in the Operational History section above, this period of time represents only a 4 hour increase per diesel in the total operational hours that are projected to accrue through August 1989. These increases are minimal when compared to the total surveillance interval, the expected operational hours and the operational hours accumulated during the first test cycle. Similar conclusions have been reached throughout the industry for extensions which equal, or exceed in length, the one proposed for HCGS.

With regard to rezeroing the consecutive interval "clock", the overhaul/inspection of the EDGs ensures that the manufacturer's specifications are met and returns the EDGs to service in "as good as new" condition. Hence the lengths of previous surveillance intervals have little impact of the future reliability of the EDG. Furthermore, since the amount of run time during the 18 month fuel cycle is small, wear failures have a very low probability of occurrence. Therefore, reinitializing the 18 month surveillance interval to zero for each of the EDGs will have an equally minimal impact on EDG reliability or operability.

As a result it can be concluded that the proposed change does not jeopardize the operability or reliability of the EDGs. Therefore, the requested A and D EDG surveillance interval extension and the reinitialization of the accrued combined time interval (per TS 4.0.2.b) to zero for all EDGs do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not remove, modify or add any new equipment, components or systems. In addition, the proposed change does not alter or revise any procedure or operational aspect nor does it involve any new mode of plant operation associated with the diesels.

Furthermore, since the performance of the last 18 month overhaul, no new loads have been added which would jeopardize the operability of the diesels. Therefore, it can be concluded that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in a margin of safety.

Deferral of surveillance testing and inspection for the requested two month period will not increase the possibility of undetected degradation of the diesels because of their infrequent operation and short run times. Since the total operational time of the diesels is very small, the probability of mechanical wear related failure is also very small. Testing and inspection can increase levels of confidence regarding the reliability of a component or system, and to some extent increase the adequacy of safety margins. Performance of the tear-down inspection and capability/endurance testing twice in the short interval described in the foregoing sections can, on the other hand, have a negative impact on the service life and overall reliability of the EDGs and ECCS equipment which would be challenged. The affected EDGs' reliability has been demonstrated through their excellent performance history and an insignificant number of start failures as compared to total starts. In addition, the Limiting Conditions For Operation and Surveillance Test Requirements such as those contained in TS 4.8.1.1.2.a, regarding the monthly start, load and run, assures that the EDGs are operable and capable of supporting station operation when called upon to do so.

Furthermore, since each overhaul/inspection of the EDGs ensures restoration to manufacturer's specifications, the lengths of any prior surveillance intervals have little impact on the future reliability of the EDG. Therefore, the reinitializing of the 18 month interval to zero (0) for the EDGs will have an equally minimal impact on their reliability or operability.

Based on the above it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analyses. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Rochester Gas and Electric Corporation, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 16, 1989.

Description of Amendment: The proposed amendment would modify the technical specifications to include steam generator tube and sleeve repair criteria.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would add steam generator tube sleeving and plugging criteria to the technical specifications. These criteria are already included in the Inservice Inspection Program as defined in Appendix B to the Ginna Station QA Manual, but have not specifically appeared in the technical specifications.

The proposed change involves adding an existing criteria to technical specifications. Adding the criteria to the specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any accident previously evaluated; or involve a significant reduction in the margin of safety. Accordingly, the Commission proposes to determine that this revision does not involve a significant hazard.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, Le Boeuf, Lamb, Leiby and McRae, Suite 110, 1133 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Richard H. Wessman, Director

Southern California Edison Company, et al., Docket Nos. 50-206, 50-361, 50-362, San Onofre Nuclear Generating Station, Unit Nos. 1, 2 and 3, San Diego County, California

Date of amendment request: February 14, 1989

Description of amendment request: The proposed change would require that the Assistant Plant Superintendent for each unit hold and maintain a senior operator license.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis about the issue of no significant hazards consideration which is quoted below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change defines the unit staff positions for which the assigned individual is required to maintain a senior reactor operator license, more explicitly than the existing Technical Specifications. The proposed change represents a more rigorous control. Therefore, the proposed change does not involve a significant increase in the probability or consequences of any previously analyzed accident.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not modify the facility or the manner in which it operates. It more explicitly defines administrative controls governing the unit staff positions for which a senior reactor operator license must be maintained, to be consistent with the regulations. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed change would implement enhanced administrative controls as described above. It therefore does not involve a reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: October 11, 1988 (Reference PCN-257)

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.6.2.1, "Containment Spray System," and TS 3/4.6.2.3, "Containment Cooling System." TS 3/4.6.2.1 defines the required number of operable containment spray flow paths from the Refueling Water Storage Tanks (RWST) to the Containment building. This Technical Specification also defines periodic surveillance tests and action to be taken if the minimum operability requirements are not met. The operability of the Containment Spray System ensures that the containment depressurization and cooling capability will be available in the event a Loss-of-Coolant Accident (LOCA). TS 3/4.6.2.3 defines the required number of independent groups of containment cooling fans required to be operable, with two fan systems in each group. The operability of the Containment Cooling System ensures that (1) the containment air temperature will be maintained within limits during normal operation, and (2) adequate heat removal capacity is available when operated in conjunction with the Containment Spray System during post-LOCA conditions.

Surveillance Requirements (SR) 4.6.2.1.b.1, 4.6.2.1.b.2, and 4.6.2.1.b.3, require that each component in the Containment Spray System flow path be demonstrated operable at least once per 18 months by verifying that it actuates to its correct position upon a Containment Spray Actuation Signal (CSAS), a Recirculation Actuation Signal (RAS), and a Safety Injection Actuation Signal (SIAS) test signal. Surveillance Requirement 4.6.2.1.b.4 requires verifying that each Containment Spray header riser is filled with water to within 10 feet of the lowest spray ring at least once every 18

months. SR 4.6.2.3.b requires that, at least once every 18 months, each containment cooling fan group be verified to start automatically on a Containment Cooling Actuation Signal (CCAS) test signal. The proposed change would revise the surveillance interval for these tests from at least once per 18 months to at least once per refueling intervals.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The required semi-annual testing of the components included within the scope of these [T]echnical [S]pecifications provides a high level of assurance that the equipment is capable of proper operation.

The frequency of the semi-annual testing is not affected by this change. Inservice testing of ASME pumps and valves provides additional assurance of proper operation. Results of surveillance testing to date have demonstrated reliable equipment performance. Increasing the interval from 18 months to once each refueling will not involve a significant increase in the probability of consequences of an accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only affects the frequency of refueling interval testing and does not alter the configuration of the facility or its operation. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change only affects the frequency of testing on a sub-system basis (18 months) without affecting the testing frequency that is done on a sub-group basis (semi-annual). The semi-annual test is capable of detecting problems which are most likely to occur. Inservice testing of ASME pumps and valves provides additional assurance of proper operation. This, coupled with reliable equipment performance, makes any potential reduction in safety margin negligible.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: October 11, 1988 (Reference PCN-259)

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.6.4.3, "Containment Dome Air Circulators." This Specification requires two independent dome air circulator trains to be operable in Modes 1 and 2. Containment dome air circulators are provided to ensure adequate mixing of the containment atmosphere following a Loss-of-Coolant Accident (LOCA). In conjunction with other containment systems, the dome air circulators will prevent localized accumulations of hydrogen from exceeding its flammable limit. TS 3/4.6.4.3 also defines periodic surveillance tests and action to be taken if the minimum operability requirements are not met.

The surveillance requirements specify that each containment dome air circulator train be demonstrated operable, at least once per 18 months, by verifying that each train starts upon a Containment Cooling Actuation Signal (CCAS) and verifying that the system flow rate is equal to or greater than 37,000 cfm. The proposed change would revise the surveillance interval for these tests from at least once per 18 months to at least once per refueling interval.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The required semi-annual testing of the components included within the scope of these Technical Specifications provides a high level of assurance that the equipment is capable of proper operation. The frequency of the semi-annual testing is not affected by this change. Results of surveillance testing to date have demonstrated reliable equipment performance. Increasing the interval from 18 months to once each refueling will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only affects the frequency of refueling interval testing and does not alter the configuration of the facility or its operation. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change only affects the frequency of testing on a subsystem basis (18 months) without affecting the testing frequency that is done on a sub-group basis (semi-annual). The semi-annual test is capable of detecting problems which are most likely to occur. This, coupled with reliable equipment performance and the history of satisfactory surveillance test results, makes any potential reduction in safety margin negligible. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: January 20, 1989 (Reference PCN-260)

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.7.1.2, "Auxiliary Feedwater System," TS 3/4.7.3, "Component Cooling Water System," TS 3/4/.7.4,"Salt Water Cooling System," and TS 3/4.7.10, "Emergency Chilled Water System." TS 3/4.7.1.2 defines the required number of operable Auxiliary Feedwater System

flow paths and pumps. The operability of the Auxiliary Feedwater (AFW) system ensures that the Reactor Coolant System can be cooled down to less than 350 degrees Fahrenheit from normal operating conditions in the event of a total loss of offsite power. TS 3/4.7.3 defines the required number of operable Component Cooling Water (CCW) loops. The operability of the CCW System ensures that sufficient cooling capacity is available for continued operation of safety related equipment during normal and accident conditions. TS 3/4.7.4 defines the required number of operable Salt Water Cooling (SWC) loops. The operability of the Salt Water Cooling System ensures that sufficient cooling capacity is available for continued operation of equipment during normal and accident conditions. TS 3/4.7.10 defines the required number of operable Emergency Chilled Water Systems (ECWS). The operability of the Emergency Chilled Water System ensures that space cooling capacity is available for continued operation of safety related equipment during accident conditions. Each of these Technical Specifications also defines periodic surveillance tests and action to be taken if the minimum operability requirements are not met.

Surveillance Requirement (SR) 4.7.1.2.b requires that, at least once per 18 months, each automatic valve in the AFW flow path and each AFW pump be verified to actuate to its desired position upon an Emergency Feedwater Actuation Signal (EFAS) test signal. Surveillance Requirement 4.7.3.b for the CCW System requires that the CCW loops be demonstrated operable by verifying, at least once per 18 months during shutdown, that each automatic valve servicing safety related equipment actuates to its correct position, and that the CCW pumps start upon a Safety Injection Actuation Signal (SIAS) test signal. Surveillance Requirement 4.7.4.b requires that at least two SWC loops be verified operable, at least once per 18 months during shutdown, by verifying that each automatic valve servicing safety related equipment actuates to its correct position and each SWC Pump starts upon as SIAS test signal. SR 4.7.10.b requires that at least once per 18 months, each of the Emergency Chilled Water Systems be demonstrated operable by verifying that each Emergency Chilled Water Pump and each power operated or automatic valve servicing safety related equipment actuates to its correct position upon any of the following test signals: SIAS, Toxic Gas Isolation (TGIS), Control Room Isolation (CRIS), or Fuel Handling Isolation (FHIS) with irradiated fuel in the storage pool. The proposed change would revise the interval for these surveillance tests from at least once per 18 months to at least once per refueling interval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The required semi-annual testing of the components included within the scope of these [T]echnical [S]pecifications provides a high level of assurance that the equipment is capable of proper operation. The frequency of the semi-annual testing is not affected by this change. Inservice testing of ASME pumps and valves provides additional assurance of proper operation. Increasing the interval from 18 months to once each refueling will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only affects the frequency of refueling interval testing and does not alter the configuration of the facility or its operation. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change only affects the frequency of testing on a sub-system basis (18 months) without affecting the testing frequency that is done on a sub-group basis (semi-annual). The semi-annual test is capable of detecting problems which are most likely to occur. Inservice testing of ASME pumps and valves provides additional assurance of proper operation. Therefore, the proposed change will not result in a significant increase in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 26, 1988 (TS 88-02, Unit 2), February 23, 1989 (TS 88-24, Unit 1) which also provides additional information for the May 26, 1988 request.

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN), Units 1 and 2 Technical Specifications (TS). The proposed charges are to revise the surveillance requirement (SR) 4.7.1.2.a to add specific, differential pressure test values for each auxiliary feedwater (AFW) pump. The associated bases section is revised to clarify the AFW technical specification requirements.

The proposed changes for the Unit 2 TS supersede the values submitted in TVA's letter dated May 26, 1988 for TS change number 88-02. The new higher proposed differential pressure values for Unit 2 are to provide additional margin to offset uncertainties in the flow and pressure test data for the AFW pump. A revised bases for Unit 2 is also submitted. A notice of consideration of issuance of an amendment for TS 88-02 was issued for Unit 2 in the Federal Register (53 FR 24522) on June 29, 1988.

Basis for proposed no significant hazards consideration determination: TVA provided the following information on the proposed TS changes in its submittal:

By letter dated June 26, 1987, TVA provided information to NRC that detailed the need for a revision to the differential pressure test values specified in SR 4.7.1.2.a. The revision to the motor-driven (MD) AFW pump differential pressure test values is necessary because of the replacement of MD pump discharge, pressure control valves (PCVs) with cavitating venturis. This modification increased the system resistance of the MDAFW flow paths and thus increased the differential pressure developed by the MDAFW pumps necessary to provide adequate flow to the steam generators. In this letter, TVA indicated that testing would be performed during unit 2 heatup to regenerate as necessary the system resistance curves.

In a September 24, 1987 letter to NRC, additional information was provided on the issue of MDAFW pump operability. This letter indicated that the element of the 2A-A MDAFW pump had been replaced to increase available margin. Because of the replacement of the pump's element, a new pump curve was required for the 2A-A MDAFW pump. This letter detailed how the new pump curve would be used in conjunction with the system

resistance curves to establish the new SR differential pressure test values. A safety evaluation report (SER) dated November 2, 1987, was received from NRC that provided NRC concurrence with TVA's methodology for developing the new SR test values. The revisions to the MDAFW pump differential pressure test values are made based on calculations generated from the test data accumulated during unit 2 heatup. This is in accordance with the commitments made in the two TVA letters and recognized in the NRC SER.

As the result of a revised pump curve and more conservative assumptions in calculations the necessary head to ensure adequate flow to the steam generator, a revision is being made to the differential pressure test value of the turbine-driven (TD) AFW pump.

To provide clarification of the AFW technical specification requirements, a revision to the bases is being made and is included for information.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. As described in section 10.4.7.2 of the SQN FSAR [Final Safety Analysis Report], the AFW system is an engineered safety features system designed, constructed, and operated to serve as a backup to the main feedwater system to provide feedwater to the steam generator in the event that main feedwater is not available. This maintains the heat sink capabilities of the steam generators. The AFW system is directly relied upon to prevent core damage and system overpressurization in the event of transients, such as a loss of normal feedwater or a secondary system pipe rupture, and to provide a means for plant cooldown following any plant transient.

The proposed change to SR 4.7.1.2.a adds pump-specific, differential pressure test values for each AFW pump. The new test values ensure that each AFW pump will provide a flow of at least 440 gal/min plus pump recirculation flow. This flow satisfies the FSAR assumptions concerning 440 gal/min AFW flow to two intact steam generators. The addition of pump-specific test values merely reflects the performance characteristics of different pumps. Because the revised SR ensures conformance with the FSAR accident analysis assumptions, the probability or consequences of an accident previously evaluated remain unchanged.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. As described above, the proposed technical specification change to SR 4.7.1.2.a adds pump-specific, differential pressure requirements for the testing of the AFW system. The revised requirements ensure that the AFW pumps will satisfy the assumptions of the FSAR AFW analyses. No changes, other than those to the testing values, are made to the AFW system. As such, the possibility of a new or different kind of accident from any previously analyzed is not created by this change.

(3) Involve a significant reduction in a margin of safety. The proposed changes to SR 4.7.1.2.a add pump-specific, differential pressure test values for each AFW pump. The new test values ensure that each AFW pump will provide a flow of at least 440 gal/min plus recirculation flow. This flow ensures that plant operation is bounded by the FSAR analyses assumptions that 440-gal/min AFW flow is available to the steam generators. Because operation remains bounded by the FSAR analyses, there is no reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: April 8, 1988 as amended July 21, 1988.

Description of amendment request: The July 21, 1988 amendment request makes two minor changes to the April 8, 1988 amendment request which was previously noticed in the Federal Register on May 31, 1988 (53 FR 19832). The first change is that the Director, Perry Plant Technical Department (PPTD), is being added to the membership of the Plant Operations Review Committee (PORC) in lieu of the Technical Superintendent, PPTD. The second change is the additional reference that Security Plan changes and Security Plan Implementing Instruction changes will be approved by the Director, Nuclear Support Department, vice the Director, PPTD. This change is a result of a recent reorganization of the site staff.

Basis for proposed no significant hazards consideration determination: The Commission has previously made a proposed determination that the amendment involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that the operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The changes proposed by the July 21 revision to the license amendment request would add a more senior member to the PORC than was previously proposed. The functions of the PORC and its members remain the same. The changes also involve moving the functional responsibility for reviews of the Security Plan and the Security Plan Implementing Instructions from the PPTD to the newly-formed Nuclear Support Department. The scope of the reviews conducted remains unchanged.

The Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has determined that:

a. The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes are administrative in nature and would not modify any accident conditions or assumptions. The proposed changes continue to meet the requirements of 10 CFR 50.36 by providing for the organization and management to ensure safe operation of the facility.

b. The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the proposed changes are administrative in nature. The composition of the PORC is strengthened over that previously proposed and the function of the PORC remains the same. The Security Plan and Security Plan Implementing Instruction changes reviews will continue to be conducted as before but only under the responsibility of a different organizational entity.

c. The changes would not involve a significant reduction in a margin of

safety because the changes would not affect systems, trains or components important to safety for the facility. The changes are administrative in nature and involve only the designation of review responsibility within the organization and do not change the manner or conduct of these reviews.

Therefore, the Commission proposes to determine that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 18, 1988

Description of amendment request: The proposed amendment consists of changes A and B.

Change A modifies the Technical Specifications to add limiting conditions of operation and surveillance requirements for the RCIC System resulting from requested improvements in NUREG-0737 for Items II.K.3.13 and II.K.3.22, which suggested that the design of the RCIC System should be modified such that:

1. The system would restart on subsequent low water level after it has been terminated by a high water level signal;

2. RCIC System suction would automatically switchover from the condensate storage tank to the suppression pool when the condensate storage tank level is low.

Change B removes the "High Reactor Vessel Water Level" trip function from the tables which specify limiting conditions for operation and surveillance requirements for HPCI System and RCIC System isolation instrumentation because it is not now located in the proper portion of the TS. The change would include these limiting conditions of operation requirements for the "High Reactor Vessel Water Level" trip function with the RCIC System actuation instrumentation and to include the surveillance requirements with the RCIC and HPCI actuation instrumentation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

Change A

1. The incorporation of existing procedural controls for RCIC actuation within the Technical Specifications does not result in any system hardware modification or new plant configuration for operation. In addition, there is no impact on any FSAR safety analysis involving the RCIC System. Furthermore, this proposed change does not alter the design basis, protective functions, or redundancy of the original system. Therefore, it is concluded that there is not a significant increase in the probability or consequences of an accident previously evaluated.

2. The incorporation of existing procedural controls for RCIC actuation within the Technical Specifications does not reduce the operation of the RCIC System from existing requirements and it is still bounded by the assumptions used in the safety analysis. The proposed change does not result in any change in Technical Specification setpoints, plant operation, protective function, or design basis of the plant. In addition, the proposed change represents the incorporation of NUREG-0737 requirements to produce Technical Specifications for RCIC restart and suction. Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The incorporation of existing procedural controls for RCIC actuation within the Technical Specifications does not affect any existing safety margins. The proposed change actually represents an increase in safety because it will provide additional assurance that RCIC System operation is maintained within the limits determined to be acceptable. Physically, RCIC System operation will not change as a result of this proposed change. Therefore, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

Change B

1. Moving the Technical Specifications for the "High Reactor Vessel Water Level" trip function from the HPCI System and RCIC System isolation instrumentation tables and the addition of this trip function to the HPCI System actuation instrumentation surveillance table does not result in any system hardware modification or new plant configuration for operation. In addition, there is no impact on any FSAR safety analysis involving the HPCI or RCIC Systems. Furthermore, this proposed change does not alter the design basis, protective functions, or redundancy of the original systems. Limiting conditions for operation and surveillance requirements pertaining to the "High Reactor Vessel Water Level" trip function will still be addressed in the Technical Specifications under RCIC and HPCI Systems actuation. Therefore, it is concluded that there is not a significant increase in the probability or consequences of an accident previously evaluated.

2. Moving the Technical Specifications for the "High Reactor Vessel Water Level" trip function from the HPCI System and RCIC System isolation instrumentation tables and the addition of this trip function to the HPCI System actuation instrumentation surveillance table does not reduce the operation of the HPCI or RCIC Systems from existing requirements and they are still bounded by the assumptions used in the safety analysis. Although the "High Reactor Vessel Water Level" trip function is to be moved as described above, its functions regarding HPCI (turbine trip) and RCIC (turbine trip and restart) remain the same. As such, an inoperative high reactor vessel water level parameter would affect RCIC and HPCI operation and is still addressed by Technical Specification requirements pertaining to operability of these systems. In addition, the same high level trip function is to be included in the Vermont Yankee Technical Specifications under RCIC actuation instrumentation and is presently included in the Technical Specifications under HPCI actuation instrumentation (limiting conditions of operation). The proposed change does not result in any change in Technical Specification setpoints, plant operation, protective function, or design basis of the plant. Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Moving the Technical Specifications for the "High Reactor Vessel Water Level" trip function from the HPCI System and RCIC System isolation instrumentation tables and the addition of this trip function to the HPCI System actuation instrumentation surveillance table does not affect any existing safety margins. Operation of these systems will remain the same. This change, when combined with Change A as described in this letter, essentially moves the listing of the trip function from portions of the Technical Specification where it is not directly applicable to the sections where it is directly applicable. All existing functions of the "High Reactor Vessel Water Level" trip relative to HPCI and RCIC operation are still subject to existing Technical Specification requirements for HPCI and RCIC operability. All existing requirements for surveillance and testing of these systems relevant to the high reactor water level parameter are maintained. Assurance that both HPCI and RCIC Systems operate within limits determined to be acceptable continues to be provided. Therefore, it is concluded that the

proposed changes do not involve a significant reduction in a margin of safety.

The Commission has provided guidance for the application of the standards in 10CFR50.92 by providing certain examples (51FR7751, dated March 6, 1986) of actions likely to involve no significant hazards consideration. One of these examples (i) is a purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. Proposed Change B falls within the scope of this Commission example since it involves moving, but not deleting, the subject trip function within the Technical Specifications.

Therefore, we conclude that these proposed changes (Changes A and B) do not constitute a significant hazards consideration, as defined in 10CFR50.92(c).

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for Licensee: John A. Ritsher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 27, 1989.

Description of amendment request: The amendment would revise the Technical Specifications to reflect administrative changes to the Technical Specifications. More specifically these changes would:

A. Remove a portion of Section 4.2 Bases that is no longer pertinent.

B. Delete the APRM flux scram trip setting definition in Section 2.1 of the Technical Specifications and provide a definition in a single location in the TS by referencing Section 3.11 B of the Technical Specifications for the definition.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a signficant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a signficant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

The Commission has provided guidance concerning the application of these standards by providing certain examples [March 6, 1986, 51FR7751]. An example of an amendment that is considered not likely to involve a significant hazards consideration is Example (i) which is a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

Proposed Change (A) corrects an administrative error introduced in Amendment No. 106 by deleting a portion of the Section 4.2 Bases which is no longer applicable. This change, therefore, does not significantly increase the probability or consequences of an accident previously evaluated since deletion of the subject Bases section is administrative in nature and does not affect plant operation. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated because the change is administrative in nature, and no physical alterations of plant configuration, changes to setpoints, or operating parameters are proposed. The proposed change does not involve a significant reduction in a margin of safety because the change involves a correction to a Bases section and does not affect any operating practices, limits, or safety-related equipment.

Proposed Change (B) corrects an administrative oversight introduced in Amendment No. 108 to specifically define the LHGR limits in one location of the Technical Specifications. This change, therefore, does not significantly increase the probability or consequences of an accident previously evaluated because the change is administrative and does not weaken or degrade the facility. The proposed change does not create the possibility of a new or different kind of accident previously evaluated because the change is administrative and ensures that the plant does not exceed the applicable safety limits. The proposed change does not involve a significant reduction in a safety margin because the change is administrative and does not involve any physical change to the facility.

Both proposed changes described above are editorial in nature and serve to correct administrative oversights in the Technical Specifications. Accordingly, both proposed changes fall within the scope of the Commission's Example (i) cited above and, thus, do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman, Director

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: February 24, 1989 and supplemented March 3, 1989.

Description of amendments request: These amendments would revise the permissible bypass conditions for item 3.b, "Auxiliary Feedwater," of Technical Specification Table 15.3.5-3, "Emergency Cooling." This change is necessitated by the installation of the ATWS mitigating system actuation circuitry (AMSAC) at Point Beach, which will bypass the "Trip of both Main Feedpumps starts motor driven pump" auxiliary feedwater actuation when reactor power is less than 40%.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92. A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has previously provided to the NRC detailed descriptions of the AMSAC proposed for installation at the Point Beach Nuclear Plant. This information was provided in a letter dated April 23, 1987, and supplemented in letters dated December 30, 1987 and March 2, 1988. The Point Beach design was approved in a safety evaluation by the Office of Nuclear Reactor Regulation, "Compliance with ATWS Rule 10 CFR 50.62" dated August 4, 1988. This design, as approved, provided for an operational bypass at 40% reactor power.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment.

(1) The modification requested in the proposed amendment amounts to an administrative clarification of an existing specification. As such, the change, of itself, does not have any impact upon the plant systems, structures, or components, and therefore cannot have any impact upon the significant hazards consideration standards listed above.

(2) The need for this clarification of the technical specifications results from the proposed installation of an AMSAC at the Point Beach Nuclear Plant. This installation was mandated by the NRC in 10 CFR 50.62. The NRC has previously determined in the statement of consideration promulgated with the significant hazards consideration rule (51 FR 7751) that a change to make a licensee conform to changes in the regulations, where the change results in very minor changes to facility operation, is not likely to involve a significant hazards consideration.

Based on the above information, the staff proposes to determine that the proposed change to the technical specifications does not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: February 1, 1989

Brief Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to reflect a revised safety analysis that includes the use of fuel designed and fabricated by Advanced Nuclear Fuels Corporation. The proposed changes to the TS also reflect the effects of reduced reactor coolant system flow, from 340,000 to 325,000 gpm for Cycle 10. Date of publication of individual notice in **Federal Register:** February 15, 1989 (54 FR 6977)

Expiration date of individual notice: March 17, 1989

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Plant No. 2, Benton, County, Washington

Date of amendment request: December 2, 1988 as supplemented February 1, 1989

Brief description of amendment: The proposed amendment would change Technical Specification Surveillance Requirement 4.8.1.1.2.e.7 which is part of the demonstration of operability of the emergency diesel generators. The surveillance requirement currently prescribes that upon loss of voltage on the emergency bus concurrent with an emergency core cooling system (ECCS) actuation signal, all division 3 automatic diesel generator trips will be bypassed except engine overspeed, generator differential current, and emergency manual stop.

The proposed amendment would show that the bypass occurs on the ECCS actuation signal. It would also include the incomplete start sequence trip in the set of trips not bypasssed.

Date of publication of individual notice in **Federal Register:** February 24, 1989 (54 FR 8041).

Expiration date of individual notice: March 27, 1989

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

NRC Project Director: George W. Knighton

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application 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 I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendments request: May 27, 1988 as supplemented by letter dated January 27, 1989 for Unit 1.

Brief description of amendments: The amendments modified the Technical Specifications (TSs) for each unit by adding operability and surveillance requirements for the core exit thermocouples (CETs). The CET system is one of the inadequate core cooling monitoring systems. These systems and the associated TSs are required by NUREG-0737, Section II.F.2 as specified by Generic Letter 83-37.

Date of issuance: March 8, 1989

Effective date: March 8, 1989

Amendment Nos.: 116 and 89

Facility Operating License Nos. DPR-51 and NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46137). The January 27, 1989 submittal for Unit 1 provided additional clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 8, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: January 4, 1988, as supplemented December 29, 1988 and January 16, 1989

Brief description of amendment: The amendment revises Technical Specification (TS) 6.2.2.e, that currently requires that the Manager-Operations holds a Senior Reactor Operator (SRO) license. The proposed TS revision is such that the Manager-Operations must: (1) hold an SRO license, or (2) have at one time held an SRO license on Shearon Harris or a similar plant.

Date of issuance: March 2, 1989

Effective date: March 2, 1989

Amendment No. 9

Facility Operating License No. NPF-63. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7587). The December 29, 1988 and January 16, 1989 letters provided clarifying information and did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1989.

No significant hazards consideration comments received: No

Attorney for the Licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket No. 50-456 Braidwood Station, Unit 1, Will County, Illinois

Date of applications for amendment: October 26, 1988, supplemented November 22, 29, 1988, and December 5, 1988.

Brief description of amendment: This amendment extends, on a one-time basis, the period provided in the Technical Specification for surveillance testing of the diesel generators for an additional 7 months to 38 months. The surveillance testing period has previously been extended 13 months from 18 months to 31 months for Unit 1 only.

Date of issuance: February 28, 1989

Effective date: February 38, 1989

Amendment No.: 14

Facility Operating License No. NPF-72: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53087). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: February 10, 1989

Brief description of amendment: This amendment provides a one-time relaxation of Technical Specification 3.11.B, "Containment Integrity," to allow the service water side of the four containment air recirculation fan heat exchangers to be cleaned while at power.

Date of Issuance: March 7, 1989

Effective date: March 7, 1989

Amendment No.: 112

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (54 FR 7311 dated February 17, 1989). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 20, 1989, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 7, 1989

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: May 24, 1988.

Brief description of amendment: This amendment revises Fermi-2 Technical Specifications 4.0.3 and 4.0.4 to allow a 24-hour delay in implementing action requirements due to a missed surveillance when the action requirements provide a restoration time which is less than 24 hours and resolve interpretational conflicts between 4.0.3 and 4.0.4. The other changes requested in the licensee's May 24, 1988 application will be handled separately.

Date of issuance: March 9, 1989

Effective date: March 9, 1989

Amendment No.: 31

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24509). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: December 16, 1988, as modified January 24, 1989.

Brief description of amendment: This amendment modified the TSs to add one-time exceptions to TS 3.0.4 for use during the second refueling outage. The exceptions allowed entry into specified operational conditions without meeting the Limiting Condition for Operation, provided the requirements of associated action statements are met.

Date of issuance: March 3, 1989

Effective date: March 3, 1989

Amendment No.: 36

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 31, 1989 (54 FR 4927). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: July 25, 1988

Brief description of amendment: The amendment changes TS 3/4.7.4, Snubbers, and the associated Bases by: (1) changing sampling plan No. 2 to eliminate the requirement to test all snubbers if the number of rejected snubbers exceeds a specified number, and (2) deleting sampling plan No. 3.

Date of issuance: March 10, 1989

Effective date: March 10, 1989

Amendment No. 56

Facility Operating License No. NPF-29. This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 25, 1988 (53 FR 32488). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: October 13, 1988

Brief description of amendment: The Technical Specifications change would revises Section 4.6.I. by providing clarifying information for determining required inspection intervals and establishing criteria for snubbers that may be exempted from being counted as inoperable.

Date of issuance: March 8, 1989

Effective date: March 8, 1989

Amendment No.: 28

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1989 (54 FR 5170). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: August 31, 1988

Brief description of amendment: This amendment revises the plant Technical Specifications (TSs) to: (1) correct an error in existing TS action statement 3.7.B.1.b to specify that the Standby Gas Treatment System is required, consistent with the definition of Secondary Containment Integrity contained in Section 1.0 of the TSs; (2) incorporate Specification 4.7.A.2.d. which was in advertently deleted by License Amendment No. 55; and (3) make other editorial corrections to achieve consistency throughout the TSs.

Date of issuance: February 28, 1989

Effective date: February 28, 1989

Amendment No.: 60

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40993). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County,Pennsylvania

Date of application for amendment: December 15, 1987

Brief description of amendment: Revised load profiles for 250 V dc battery banks 1D650 and 1D660.

Date of issuance: February 28, 1989

Effective date: February 28, 1989

Amendment No.: 86

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30140). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: May 9, 1988

Brief description of amendment: The amendment revised the license to reflect that co-owner Pacific Power and Light Company has merged with Utah Power and Light Company to become a new corporation, Pacificorp, continuing to do business under the assumed business name of Pacific Power and Light Company.

Date of issuance: February 28, 1989

Effective date: February 28, 1989

Amendment No.: 150

Facility Operating License No. NPF-1: Amendment revised the License.

Date of initial notice in **Federal Register:** December 29, 1988 (53 FR 52881). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1989.

No significant hazards considerations comments received: No.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland, Oregon 97207.

NRC Project Director: George W. Knighton

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: August 23, 1988

Brief description of amendment: The amendment revises the Technical Specifications to delete the listing of safety-related snubbers (Table 3.13-1) while maintaining their operability and surveillance requirements.

The issuance of this amendment eliminates the need for any further staff action on the amendment request dated December 21, 1987.

Date of issuance: March 1, 1989

Effective date: March 1, 1989

Amendment No.: 83

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46153). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: February 24, 1988

Brief description of amendment: The amendment revises the Technical Specifications to prohibit control bank withdrawal when Tavg is greater than 350° F unless four reactor coolant pumps are operating.

Date of issuance: March 8, l989

Effective date: March 8, 1989

Amendment No.: 84

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15915). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: December 19, 1988.

Brief description of amendment: The amendment added a fixed high temperature trip setpoint to the Steam Line Rupture Detection/Isolation System.

Date of issuance: February 27, 1989

Effective date: February 27, 1989

Amendment No.: 68

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1989 (54 FR 5174). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Rochester Gas and Electric Corporation, Docket 50-244, R. E. Ginna Nuclear Power Plant

Date of application for amendment: October 10, 1988, as supplemented on December 22, 1988.

Brief description of amendment: The amendment modifies the Technical Specifications to reflect the appropriate titles for corporate positions having responsibility for overall plant safety, and PORC membership.

Date of issuance: March 8, 1989.

Effective date: March 8, 1989.

Amendment No.: 32

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 2, 1988 (53 FR 44255). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 10, 1988 (TS 88-22)

Brief description of amendments: The amendments modify the Sequoyah Nuclear Plant Units 1 and 2 Technical Specifications (TS). The changes revise containment system surveillance requirements (SR) 4.6.1.2.g and 4.6.3.2 and Table 3.6-2, "Containment Isolation Valves." The changes provide additional surveillance testing for the residual heat removal (RHR) spray lines (penetrations X-49A and -49B) and the normal charging containment isolation valve.

Date of issuance: February 28, 1989

Effective date: February 28, 1989

Amendment Nos.: 101, 90

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 7, 1988 (53 FR 34614). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 2, 1988 (TS 88-32)

Brief description of amendments: The amendments revise surveillance requirement (SR) 4.6.1.2 and Bases 3/4.6.1.2 in the Sequoyah, Units 1 and 2 Technical Specifications to permit the use of the mass point method for calculating containment leakage rates for the Appendix J, Type A test. The request for an exemption to Appendix J of 10 CFR Part 50 in this application was withdrawn in the Tennessee Valley Authority letter dated December 21, 1988.

Date of issuance: March 2, 1989

Effective date: March 2, 1989

Amendment Nos.: 102, 91

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53099). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 16, 1987, as clarified and amended by letters dated June 17, 1987 and November 21, 1988 (TS 80).

Brief description of amendments: These amendments modify the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications (TS) to delete Surveillance Requirement (SR) 4.6.1.8.d.4 for the emergency gas treatment system heaters. A typographical error in SR 4.7.8.d.4 (Unit 1 only) is also corrected.

In the licensee's letter dated November 21, 1988, it withdrew the proposed changes to SR 4.7.8.d.4 and 4.9.12.d.3 and their associated bases of the TS for the auxiliary building gas treatment system. This withdrawal of a portion of TVA's original application does not change the substance of the Notice of Consideration of an amendment which the staff issued in the **Federal Register** on December 16, 1987 (53 FR 47793).

Date of issuance: March 6, 1989

Effective date: March 6, 1989

Amendment Nos.: 103, 92

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 16, 1987 (52 FR 47793). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 6, 1988 (TS 88-26)

Brief description of amendments: The amendments modify the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications. The changes add a footnote to limiting condition for operation 3.4.2 for the reactor coolant system (RCS) safety valves. The footnote allows the three safety valves on the pressurizer for each unit to be tested at the same time in Modes 4 and 5 by removing the valves from the pressurizer and covering the holes in the RCS by a non-pressure-retaining membrane.

Date of issuance: March 9, 1989

Effective date: March 9, 1989

Amendment Nos.: 104, 93

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 11, 1989 (54 FR 1025). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 30, 1988 was clarified by letters dated December 21, 1988 and January 6, 1989.

Brief Description of amendment: This amendment revises the Technical Specifications to permit the use of a revised Fuel Cladding Integrity Safety Limit for use in calculating critical power operating limits.

Date of issuance: February 27, 1989

Effective date: 30 days from date of issuance

Amendment No.: 109

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 11, 1989 (54 FR 1026). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 29, 1987

Brief description of amendment: The amendment revised Technical Specification 3/4.3.1. "Reactor Trip System Instrumentation," in accordance with the requirements of Generic Letter 85-09. The Generic Letter required licensees to propose appropriate Technical Specification changes to explicitly require independent testing of the undervoltage and shunt trip attachments during power operation and independent testing of the control room manual switch contacts during each refueling outage.

Date of Issuance: March 1, 1989

Effective date: March 1, 1989

Amendment No.: 26

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (53 FR 28390). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that 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 I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone

comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 21, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: March 6, 1989

Description of amendments: The amendments modified the Technical Specifications to allow an increase in Unit 2 Centrifugal Charging Pump runout flow of five gallons per minute.

Date of issuance: March 8, 1989

Amendment Nos.: 19 and 1

Effective Date: March 8, 1989

Facility Operating License Nos.: NPF-68 and NPF-79. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation is contained in a Safety Evaluation dated March 8, 1989

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Altanta, Georgia 30043.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

NRC Project Director: David B. Matthews

Dated at Rockville, Maryland, this 14th day of March 1989.

For the Nuclear Regulatory Commission

Gus C. Lainas,

Acting Director Division of Reactor Projects-I/II Office of Nuclear Reactor Regulation

[FR Doc. 89-6583 Filed 3-21-89; 8:45 am]

BILLING CODE 7590-01-D

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of Form RI 25-14 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request to extend an information collection from the public. Form RI 25-14, Self-Certification of Full-Time School Attendance, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of section 8341(a)(4)(c), and section 8441, title 5, U.S. Code, to receive benefits as a student. Approximately 14,000 Self-Certification of Full-Time School Attendance forms are completed annually; each requires approximately 12 minutes to complete, for a total public burden of 2,800 hours. For copies of this proposal, call Larry Dambrose, on 632-0199.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 89-6752 Filed 3-21-89; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24838]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 15, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 10, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. [70-7614]

Supplemental Notice Correcting Errata in Prior Notice

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia, and two of its public-utility subsidiaries, Gulf Power Company ("Gulf"), 75 North Pace Boulevard, Pensacola, Florida 32505, and Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, have filed an application-declaration subject to sections 6(a), 6(b), 7(e), 12(b) and 12(e) of the Act and Rules 45, 50(a)(5) and 62 thereunder. A notice ("Prior Notice") of the filing of the application-declaration was issued by the Commission on March 2, 1989 (HCAR No. 24830).

As stated in the Prior Notice, Southern, among other things, proposes to use the proceeds of borrowings previously authorized by the order dated December 29, 1987 (HCAR No. 24552), together with treasury funds and the proceeds from other external sources including but not limited to the issuance of common stock authorized in the order dated September 13, 1988 (HCAR No. 74713), to make additional equity investments, through March 31, 1991, in the form of capital contributions to Gulf, Mississippi and Georgia Power Company, also a public-utility subsidiary of Southern. The Prior Notice misstated the aggregate amounts of capital contributions that Southern proposes to make to Gulf, Mississippi and Georgia as, $200 million, $10 million and $20 million, respectively. The aggregate amounts of capital contributions that Southern actually proposes to make to Gulf, Mississippi and Georgia should have been stated as $10 million, $20 million and $200 million.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-6757 Filed 3-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24840]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 16, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 10, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified or any hearing, if ordered, and will receive a copy of any notice of order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CSW Energy, Inc., et al. [70-7645]

Central and South West Corporation ("CSW"), a registered holding company, and its nonutility subsidiary, CSW Energy, Inc. ("Energy"), both located at 2121 San Jacinto Street, Dallas, Texas 75201, have filed an application-declaration pursuant to Sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 43, 45, 86, 87, 90, and 91 thereunder.

Energy is seeking authority, through March 31, 1991, to spend up to $1 million to conduct certain feasibility and engineering studies and to finance certain preliminary expenses in connection with a proposed cogeneration facility to be located in Newark, New Jersey. CSW is seeking authority to purchase additional shares of Energy's common stock or to make capital contributions to Energy to provide funds for such studies in principal amounts up to $1 million.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-6758 Filed 3-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26636; File No. SR-OCC-89-3]

Self-Regulatory Organization; Filing of Proposed Rule Change by the Options Clearing Corp.; Relating to Increases in Clearing Member Net Capital Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78a(b)(1), notice is hereby given that on March 1, 1989, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change increases, from $150,000 to $1,000,000, the initial net capital requirements for OCC's clearing members, and increases, from $100,000 to $750,000, the maintenance net capital requirements for OCC's clearing members. The proposed rule change also increases, from $300,000 to $2,000,000, the mininum net capital requirements for clearing members that provide facilities management services for up to four other clearing members, and increases, from $50,000 to $100,000, the additional net capital that such facilities managers must maintain for each clearing member managed in excess of four.

OCC proposes to give those clearing members that presently do not have net capital meeting the new requirements, a period of twelve months from the effective date of the Commission's approval of the proposed rule change within which to increase their net capital to meet the new requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to increase, from $150,000 to $1,000,000, the initial net capital requirements for OCC's clearing members, and to increase, from $100,000 to $750,000, the maintenance net capital requirements for OCC's clearing members. The proposed rule change also increases, from $300,000 to $2,000,000, the minimum net capital requirements for clearing members that provide facilities management services for up to four other clearing members, and increases, from $50,000 to $100,000, the additional net capital that such facilities managers must maintain for each clearing member managed in excess of four.

Those few clearing members not presently having net capital meeting the new requirements would have twelve months from the effective date of the Commission's approval of the proposed rule change within which to increase their net capital to at least the $750,000 maintenance level.

1. *Clearing Member Initial and Maintenance Net Capital Requirements.* The initial and maintenance net capital requirements of OCC's clearing members have remained unchanged since OCC's inception in 1972. Consequently, current net capital levels do not reflect the increases since that time in the size, complexity and volatility of the options markets, or the effects of inflation. In setting net capital requirements to levels that it believes realistically reflects these developments, OCC has attempted to strike a prudent balance between its need to ensure the creditworthiness of its clearing members and its responsibility to provide market participants broad access to clearing and settlement services.

Most of OCC's present clearing members already maintain net capital levels meeting the new requirements. As of December 31, 1988, only nine of OCC's approximately 170 clearing members have net capital less than $1,000,000. Of those, two have net capital exceeding $750,000. Three others have a parent or an affiliate from which they could be expected to receive

capital infusions to meet the new requirements. The other four would be expected to undergo some type of restructuring in order to meet the new requirements. To prevent serious disruption to the affairs of their businesses, those clearing members having net capital less than the $750,000 maintenance level will have 12 months from the effective date of the Commission's approval of the proposed rule change to bring their net capital levels to at least $750,000.

The changes to OCC's Rules reflecting the increased net capital requirements are largely self-explanatory. The changes to Rules 301(a) and 302(a) reflect the increases in clearing member initial and maintenance net capital requirements, respectively.

Amendments to other rules are being made to conform them to the new net capital requirements. Amendments to the "early warning" provisions of paragraph (a)(1) and Policy .01 of Rule 303 would require clearing members to advise OCC whenever its net capital fell below $1,000,000 (increased from $150,000). For a Canadian clearing member, this level would be triggered at U.S. $1,000,000 (increased from U.S. $150,000) of that clearing member's "net free capital"—the Canadian equivalent of net capital.

Changes to paragraph (b) and Policy 2 of Rule 304 preclude a clearing member from making a distribution to its stockholders, partners or employees, where the effect of that distribution would be to reduce the clearing member's net capital below $1,000,000 (increased from $150,000). For Canadian clearing members, this lower limit is set at U.S. $1,000,000 of its net free capital (increased from U.S. $150,000).

Policy 1 of Rule 305 is amended to provide that the Chairman or the President of OCC would have the authority to restrict certain aspects of a clearing member's business where its net capital falls below $1,000,000 (increased from $150,000).

2. *Facilities Managers Net Capital Requirements.* The reasons supporting an increase in clearing members' net capital requirements similarly justify an increase in OCC's more stringent net capital requirements for facilities managers—those clearing members providing "back office" functions for other clearing members not having the operational capacity, experience or competence to perform those functions on their own. Consequently, changes to Rule 309 increase, from $300,000 to $2,000,000, the minimum net capital required of facilities managers that manage up to four other clearing members. Those changes also increase, from $50,000 to $100,000, the minimum net capital that a facilities manager must maintain, in addition to the $2,000,000 minimum, for each clearing member in excess of four that it manages.

All of OCC's seven clearing members acting as facilities managers maintain net capital meeting the increased levels. Therefore, a "grandfathering" period for facilities managers will not be necessary.

* * * * *

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934 (the "Act") because it will provide, through strengthened financial standards of OCC's clearing members, for the continued financial integrity of OCC's clearance and settlement system for standardized options, while at the same time providing market participants with broad access to clearing and settlement services.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

On December 7, 1988, OCC sent a letter to those clearing members which as of October 31, 1988 reported net capital less than $1,000,000, requesting their comments on the proposed increase in net capital requirements. Only one clearing member responded in writing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 12, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 16, 1989.

[FR Doc. 89-6759 Filed 3-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26637; File No. SR-PSE-89-03]

Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange Inc.; Relating to the Deletion of Specific Provisions for Listing Options on Convergent Technologies, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 3, 1989, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange"), proposed to delete references to Convergent Technologies, Inc. (CVGT) from Rule VI, sections 12 and 13.

(Brackets indicate language to be deleted, italic indicates new language.)

Rule VI

Section 12. No change.

Commentary:

.01 and .02 No change.

[.03 Subparagraph (a)(iv) of section 12 does not apply to classes of options on Convergent Technologies, Inc. (CVGT).]

[.04].*03* As used in both Sections 12 and 13, the word "security" may be broadly interpreted to mean any equity security as defined in Rule 3a11–1, promulgated under the Securities Exchange Act of 1934, which is appropriate for options trading. The word "shares" shall mean the unit of trading of such security.

Section 13. No change.

Commentary:

.01 through .04 No change.

[.05 Commentary .01 and Commentary .02 do not apply to the classes of options on CVGT.]

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. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to delete provisions for listing options on Convergent, Inc. (CVGT; options symbol CVQ), as the provisions are no longer applicable.

Due to a merger of CVGT with CT Acquisition Corp., which occurred on December 22, 1988, the PSE, as of that date, has ceased trading in CVGT stock and CVQ option contracts, thus eliminating the need for the special listing provisions contained in PSE Rule VI, Sections 12 and 13.

The PSE believes that this proposed rule filing is concerned solely with the administration of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 12, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

March 16, 1989.

[FR Doc. 89–6760 Filed 3–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16871; (812–7182)]

Baron Asset Fund and Baron Capital, Inc; Application

March 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Baron Asset Fund (the "Fund") and Baron Capital, Inc. ("BCI").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c–1 thereunder.

Summary of Application: Applicants seek an order amending a prior order (Investment Company Act Release No. 16039, October 7, 1987) which permits the assessment of a contingent deferred sales load ("CDSL"). The amended order would waive the CDSL under certain circumstances and change the manner in which the CDSL is calculated as described below.

Filing Date: The application was filed on December 19, 1988, and amended on February 27, 1989.

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 notifed if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 11, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for 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; Applicants, c/o Linda S. Martinson, Esq., 450 Park Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–3420, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Fund is registered under the 1940 Act as a diversified, open-end management investment company. BCI serves as principal underwriter and BAMCO, Inc. is its investment adviser. The Prior Order was issued on behalf of Applicants and all existing and subsequently created series of the Fund and any other future investment company or series which will be distributed by BCI on substantially the same basis as the Fund's shares ("Other BCI Funds"). Pursuant to the Prior Order, a 2% CDSL is imposed if the shares being redeemed have been held for less than three years. The CDSL is now imposed at the time a redemption or repurchase occurs and is based upon the net asset value at the time of the redemption or repurchase.

2. Applicants now request that the Prior Order be amended to permit the waiver of the CDSL on any redemption of shares of the Fund or Other BCI Funds purchased by or on behalf of any officer, director, trustee, or employee (or a spouse or child of any such person) of the Fund or Other BCI Funds, the investment adviser or distributor or any company affiliated with the adviser or the distributor of the Fund or Other BCI Funds, provided that such redemption occurs at least 90 days after the purchase of shares being redeemed. Applicants also seek to amend the Prior Order to permit Applicants to calculate the CDSL on the basis of the lesser of 2% of the net asset value of the Fund or Other BCI Funds shares being redeemed at the time of purchase or 2% of the net asset value of the shares being redeemed at redemption.

3. The Board of Trustees of the Fund and the Other BCI Funds, in their periodic review of their distribution plans approved in accordance with the provisions of Rule 12b–1 under the 1940 Act will, consider the use of BCI of revenues raised by the CDSL and the continuing appropriateness of the reduction of the fee paid by the funds under such Rule 12b–1 distribution plans by the amount of the CDSL. The maximum amount of any CDSL or combination of CDSL and any sales load payable at the time Fund or Other BCI Funds shares are purchased will not exceed the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, Section 26(d) of the Rules of Fair Practice promulgated by the National Association of Securities Dealers.

4. No CDSL is imposed when shares are redeemed representing reinvested dividends and distributions. No CDSL is imposed on an amount that represents an increase in the value of Fund or Other BCI Funds shares due to capital appreciation. In determining the applicability of the CDSL, it is assumed that the shares being redeemed are the earliest purchase of shares which have not already been redeemed. No amount is charged to shareholders or to the Fund and Other BCI Funds that is intended as payment of interest or any similar charge related to the CDSL.

Applicants' Legal Analysis

1. Applicants believe that the proposed waiver and amended calculation of the CDSL would be fair and equitable and in the interest of the shareholders of the Fund, Other BCI Funds and the public. The proposed waiver is consistent with the scope of reduced or waivered sales charges permitted by Rule 22d–1 under the 1940 Act inasmuch as there is no expense associated with marketing and selling shares of the Fund or the Other BCI Funds to the indivdiuals specified in the waiver, thereby resulting in economies as contemplated by Rule 22d–1. Since many mutual funds waive all initial sales charges on sales of shares to employees of affiliated persons and affiliated persons of affiliated persons, the waiver of the CDSL by the Applicants in similar circumstances is consistent with the 1940 Act and the protection of investors without being discriminatory.

2. An intended effect of the proposed waiver is to encourage those individuals who are involved in the management, administration or marketing of the Fund or Other BCI Funds to acquire and maintain an equity position in the Fund or Other BCI Funds. To further promote this objective and to discourage short-term trading in the shares of the Fund or Other BCI Funds, which would defeat the stated purpose of the waiver, the waiver would not be available for redemptions of the shares of the Fund or Other BCI Funds occurring within 90 days of purchase.

3. Amending the basis for calculating the CDSL to the lesser of 2% of the net asset value of shares being redeemed at the time of purchase or 2% of the net asset value of shares being redeemed at redemption would eliminate assessing a CDSL on the appreciation of the shares and would conform the CDSL with proposed Rule 6c–10 under the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of proposed Rule 6c–10 under the 1940 Act as currently stated and as it is adopted.

2. Applicants will comply with the provisions of Rule 12b–1 under the 1940 Act as they are now in effect and as it may be revised in the future.

3. Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

4. Applicants agree that the exemptive relief requested does not cover any person or any affiliated person of such person (or any affiliated person of such affiliated person) who holds the Fund or the Other BCI Funds out to the public, or who, directly or indirectly, causes such funds to be held out to the public, as being "no-load" or uses, or who, directly or indirectly, causes the use of terminology that given the context and presentation is likely to convey to investors the impression that no charges for sales or promotional expenses are imposed on shares issued by the Fund or the Other BCI Funds.

For the SEC, by the Division of Investment Mangement, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–6754 Filed 3–21–89; 8:45am]

BILLING CODE 8010–01–M

[Rel. No. IC—16868; 812–7110]

L&N CMO Funding Corp.; Application

March 16, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Amended Order of Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: L&N CMO Funding Corporation ("Applicant"), on behalf of itself and certain trusts that elect to make use of the Amended Order (each, a "Trust").

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant received a conditional order (the "Existing Order") on September 21, 1987 (Investment Company Act Release No. 15994) which permitted (1) electing trusts to issue and sell mortgage obligations ("Bonds") collateralized by Agency Certificates (as defined below), (2) the sale or assignment of beneficial interests in the Trusts ("Residual Interests") to sophisticated institutional investors, and (3) the election by the Trusts to be treated as REMICs. Applicants now request an Amended Order which would (1) permit electing

Trusts to issue and sell Bonds collateralized by Non-Agency Certificates (as defined below), (2) permit the use of certain funding agreements by the Trusts, (3) permit the sale or assignment of Residual Interests of sophisticated non-institutional investors, and (4) amend and restate the representations and conditions contained in the Existing Order.

Filing Date: The Application was filed on September 1, 1988, and amended on January 12, 1989 and February 9, 1989. An additional amendment, the content of which is contained in letters to the staff of the Commission dated March 14, 1989 and March 15, 1989, and the substance of which is thus included herein, will be filed during the notice period.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the Application, or ask to be notified if a hearing is ordered. Any request should be in writing and should be received by the SEC by 5:30 p.m., on April 10, 1989. A request for a hearing should state the nature of the requestor's interest, the reason for the request, and the issues contested. Any person requesting a hearing should serve the Applicant with a copy of the request, either personally or by mail, and should send the request to the Secretary of the SEC, along with proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. A request for notification of the date of a hearing may be made by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. L&N CMO Funding Corporation, 2001 Bryan Tower, Suite 3600, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. Any person may obtain a copy of the complete Application for a fee, either by going to the SEC's Public Reference Branch, or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Nevada Corporation and an indirect wholly-owned limited purpose financing subsidiary of Lomas & Nettleton Financial Corporation. Applicant engages in mortgage-backed financing by establishing separate Trusts to issue and sell one or more series (each, a "Series") of fixed and variable rate bonds. Neither the Applicant nor the Trusts will engage in any business or investment activities unrelated to such purpose.

2. Each Trust has been or will be formed pursuant to a separate deposit trust agreement ("Deposit Trust Agreement") between the Applicant, acting as depositor, and a bank or trust company or other fiduciary acting as owner-trustee ("Owner Trustee"). Each Trust will issue one or more Series of Bonds under the terms of an indenture ("Indenture") between the Owner Trustee and an independent trustee ("Indenture Trustee"), as supplemented by one or more series supplements. The Indentures with respect to each Series of Bonds will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

3. Under the Existing Order, the Trusts invest in Agency Certificates and other collateral that is pledged or assigned to an Indenture Trustee as security for each Series of Bonds.[1] Applicant now proposes, subject to the amended and restated conditions contained in the Application to: (i) use Non-Agency Certificates as collateral for the Bonds,[2] (ii) to enter into certain funding agreements, and (iii) to sell or assign Residual Interests to sophisticated non-institutional investors.

4. Limited purpose financing entities affiliated with homebuilders, thrifts, commercial banks, mortgage bankers and other entities engaged in mortgage finance (each, a "Participant") may enter into funding agreements with a Trust ("Funding Agreements"). In such event, Mortgage Collateral (as defined below) owned by a Participant ("Indirect Mortgage Collateral") will be pledged to the Trust as security for a loan from the Trust to the Participant of all or a portion of the proceeds from the sale of a Series of Bonds. The indebtedness created by each Funding Agreement will be evidenced by one or more promissory notes ("Funding Notes"). The Trust will assign its entire right, title and interest in the Funding Agreements (other than the Trust's right to receive fees, to indemnification and to reimbursement as provided for in the related Indenture) and in the related Funding Notes and Indirect Mortgage Collateral to the Indenture Trustee as security for each Series of Bonds. Each Participant will be obligated to repay the indebtedness evidenced by the Funding Notes by causing payments to the Indirect Mortgage Collateral securing such Funding Notes to be made directly to the Indenture Trustee in amounts sufficient to pay such Participant's share of principal and interest on the Bonds, together with certain administrative expenses of the Trust.

5. The Mortgage Collateral securing each Series of Bonds which is owned by a Trust ("Direct Mortgage Collateral") will consist of Agency Certificates or Non-Agency Certificates (together, "Mortgage Certificates"). The Indirect Mortgage Collateral will consist of Mortgage Certificates or Mortgage Loans. (The Direct Mortgage Collateral and Indirect Mortgage Collateral are collectively referred to as the "Mortgage Collateral," and the Mortgage Collateral and all other collateral securing the Bonds are collectively referred to as the "Collateral"). All or a portion of the Agency Certificates backing the Bonds may be "partial pool" Agency Certificates, which represent less than 100% of the undivided fractional ownership interest in an underlying pool of mortgage loans, and some or all of any remainder could be "whole pool" Agency Certificates. Under the definition contained in the Application, Non-Agency Certificates are always "whole pool" certificates.

6. In the case of each Series of Bonds: (a) The Trust will hold no substantial assets other than the Mortgage Collateral and a limited amount of other collateral securing such Bonds; (b) the Mortgage Collateral will have a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) scheduled distributions of principal and interest received on the Direct Mortgage Collateral securing the Bonds and on the Indirect Mortgage Collateral securing Funding Notes pledged as security for such Bonds (together with cash available to be withdrawn from any

[1] Agency Certificates are defined as (1) fully-modified pass-through mortgage-backed certificates ("GNMA Certificates") guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("GNMA"), (2) mortgage pass-through certificates ("FNMA Certificates") guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA"), or (3) mortgage participation certificates ("FHLMC Certificates") guaranteed as to timely payment of interest and ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("FHLMC").

[2] Non-Agency Certificates are defined as pass-through certificates and participation certificates which are neither issued nor guaranteed by an agency or instrumentality of the United States and which evidence the entire undivided interest in whole mortgage loans secured by first liens on single (one to four) family residential properties ("Mortgage Loans").

reserve funds, debt service funds, overcollateralization funds or other funds), plus reinvestment income thereon, will be sufficient to make timely payments of principal of and interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Collateral will be assigned to the Indenture Trustee and will be subject to the lien of the related Indenture.

7. The Residual Interest holders, the Owner Trustee and the Indenture Trustee of any Trust will not be able to impair the security afforded by the Mortgage Collateral to the holders of the Bonds. Without the consent of each Bondholder to be affected, neither the Residual Interest holders, the Owner Trustee, nor the Indenture Trustee will be able to (a) change the stated maturity on any Bonds; (b) reduce the principal amount or the rate of interest (or the formula by which such rate is computed) on any Bonds; (c) change the priority of payment on any class of any Series of Bonds; (d) impair or adversely affect the Mortgage Collateral securing a Series of Bonds or securing Funding Notes securing such series; (e) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Collateral; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

8. The interests of the Bondholders will not be compromised or impaired by the sale of Residual Interests in any Trust. The sale of Residual Interests in any Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created under the Indenture to support the payment of principal and interest on the Bonds.

9. Except to the extent permitted by the limited right to substitute Collateral, it will not be possible for the Residual Interest holders to alter the Collateral initially deposited into a Trust, and in no event will such right to substitute Collateral result in a diminution in the value or quality of such Collateral. Although it is possible that any Mortgage Collateral substitued for Mortgage Collateral initially deposited into a Trust may have a different prepayment experience than the original Collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any Mortgage Collateral will be determined by market conditions beyond the control of the Residual Interest holders, which market conditions are likely to affect all Mortgage Collateral of similar payment terms and maturities in a similar fashion; and (b) the interests of the Residual Interest holders are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience.

Applicant's Legal Conclusion

The requested order is necessary and appropriate in the public interest because: (a) Applicant and the Trusts should not be deemed to be entities to which the provisions of the 1940 Act were intended to be applied; (b) Applicant and the Trusts may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) Applicant's and the Trusts' activities are intended to serve a recognized and critical public need; (d) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the Securities Act of 1933, as amended (the "1933 Act"), and thereafter by the Indenture Trustee representing their interests under the Indenture; and (e) the Residual Interests in the Trusts will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional or "accredited" non-institutional investors through private placements.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following:

A. Conditions Relating to the Bonds

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Direct Mortgage Collateral securing the Bonds will be limited to Agency Certificates and Non-Agency Certificates, and the Indirect Mortgage Collateral securing the Funding Notes securing the Bonds will be limited to Agency Certificates, Non-Agency Certificates and Mortgage Loans.

3. If new Mortgage Collateral is substituted for Mortgage Collateral initially pledged as security for a Series of Bonds or as security for Funding Notes securing such Series, the substitute Mortgage Collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in paragraphs 2. and 4. of this Section A. New Non-Agency Certificates may be substituted for Non-Agency Certificates initially pledged only in the event of default, late payments or defect in such Non-Agency Certificates being replaced. In addition, new Mortgage Collateral will not be substituted for more than 40% of the aggregate face amount of the Mortgage Collateral initially pledged as Mortgage Collateral. With respect to a Series of Bonds secured by Funding Notes which are secured as Mortgage Loans, (i) new Mortgage Loans will not be substituted for more than 20% of the aggregate face amount of the Mortgage Loans initially pledged as Mortgage Collateral, and (ii) new Mortgage Loans may be substituted for Mortgage Loans initially pledged as Mortgage Collateral only in the event of default, late payments or defect in such Mortgage Loans being replaced. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

4. All Mortgage Collateral, funds, accounts or other collateral securing a Series of Bonds or securing Funding Notes securing such Series will be held by the Indenture Trustee or on behalf of the Indenture Trustee by an independent custodian (a "Custodian"). Neither the Custodian nor the Indenture Trustee will be an "affiliate" (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant, any Trust, the Owner Trustee, any Participant or the master servicer or originating lender of any Mortgage Loans (including, for purposes of this paragraph, Mortgage Loans underlying Non-Agency Certificates) securing a series of Bonds or securing Funding Notes securing such Series. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Indenture Trustee or Custodian. The Indenture Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. No less often than annually, an independent public accountant will audit the books and records of the Trust and, in addition, with respect to each

Series of Bonds, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Indenture Trustee.

7. The master servicer of any Mortgage Loans (including, for purposes of this paragraph, Mortgage Loans underlying Non-Agency Certificates) securing a Series of Bonds or securing Funding Notes securing such Series may not be an affiliate of the Indenture Trustee or Custodian. If there is no master servicer for the Mortgage Loans securing a Series of Bonds or securing Funding Notes securing such Series, no servicer of those Mortgage Loans may be an affiliate of the Indenture Trustee or Custodian. In addition, any master servicer and any other servicer of the Mortgage Loans will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residual Mortgage Loans. Each agreement governing the servicing of Mortgage Loans shall obligate the servicer to provide substantially the same services with respect to such Mortgage Loans as it is then currently required to provide in connection with the servicing of Mortgage Loans insured by the Federal Housing Administration, guaranteed by the Veterans Administration or eligible for purchase by FNMA or FHLMC.

8. Beneficial and legal ownership of all Mortgage Collateral deposited with the Indenture Trustee will not be transferred until such time as the Indenture Trustee releases such Mortgage Collateral from the Indenture.

B. Additional Conditions Relating to Variable-Rate Bonds

1. The interest rate for each class of variable-rate Bonds will be subject to maximum interest rates ("interest rate caps") which may vary from period to period, and will always be specified in the related prospectus supplement for a Series of Bonds.

2. The Collateral deposited with the Indenture Trustee to secure a Series of Bonds will at all times be sufficient to provide for the full and timely payment of all principal and interest on the Bonds of such Series under the assumption that the interest rate on all Bonds of such Series (including any class thereof) is the maximum rate for each specific period.[3]

3. No Direct Mortgage Collateral or Funding Notes securing a Series of Bonds may be released from the lien of the Indenture prior to retirement in full of all Bonds of such Series and no Indirect Mortgage Collateral securing a Funding Note may be released from the lien of the related Funding Agreement prior to the retirement of such Funding Note, except to the extent permitted by the limited right to substitute Collateral as described in the Application.

C. Conditions Relating to Sale of Residual Interests

1. Applicant may sell or assign its Residual Interest in each Trust to a limited number, in no event more than one hundred, of institutional investors or non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Applicant will sell or assign its Residual Interests only in Trusts which issue Series of Bonds in which the Mortgage Collateral is limited to Agency Certificates or Funding Agreements Secured by Agency Certificates.

Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interests and to understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors, which may include individuals, will be limited to not more than fifteen, will be required to purchase at least $200,000 (measured by market value at the time of purchase) of such Residual Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage-related securities. Holders of Residual Interests will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutions or non-institutional investors as described above which customarily engage in the purchase or origination of mortgages and other types of mortgage related securities. Each registered investment company acquiring a Residual Interest will be required to satisfy itself that such acquisition will be in compliance with the provisions of section 12(d)(1) of the 1940 Act.

2. Residual Interests will be sold in transactions exempt from the registration requirements of the 1933 Act under Section 4(2) thereof.

3. Each purchaser of a Residual Interest will be required to represent that it is purchasing such Residual Interest for investment purposes and not for distribution, and that it will hold such Residual Interest in its own name and not as nominee for undisclosed investors. Each purchaser of a Residual Interest will be required to agree that it will not resell such interest unless (i) the subsequent purchaser would have been eligible to purchase the Residual Interest directly from the Applicant under the terms of Condition C.1, (ii) after the sale there would be no more than one hundred Residual Interest Holders, and (iii) the subsequent purchaser agrees to be subject to the same representations and undertakings as are applicable to the reselling purchaser. In addition, the Deposit Trust Agreement relating to each Trust will further prohibit the transfer of any Residual Interest if there would be more than one hundred Residual Interest holders with respect to such Series of Bonds at any time.

4. No holder of a controlling interest in a Trust (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with either the Custodian or any Rating agency rating the Bonds.

5. No holder of a Residual Interest will be affiliated with the Indenture Trustee, the Custodian or any rating agency rating the Bonds.

6. If the sale of Residual Interests results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of a Trust, the relief afforded by any order granted on the Application would not apply to subsequent Bond offerings by such Trust.

D. Conditions Relating to REMICs

1. The election of any Trust to treat the arrangement by which any Series of Bonds is issued as a REMIC will have no effect on the level of the expenses that would be incurred by any such Trust. If such REMIC election is made with respect to a Series of Bonds, the Trust

[3] In addition to those mechanisms referred to in the application, Applicant may utilize additional mechanisms to ensure the adequacy of the Collateral notwithstanding the issuance of Bonds bearing interest at variable rates. Applicant will give the staff of the SEC notice by letter of any such additional mechanisms before they are utilized to give the staff an opportunity to raise any questions as to their appropriateness. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories.

will provide that all administrative fees and expenses in connection with the administration of the Trust will be paid or provided for in a manner satisfactory to each rating agency rating the Bonds.

2. Any Trust making a REMIC election will ensure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which method or combination of methods described in the Application is selected by such Trust to provide for the payment of fees and expenses.

E. Special Condition

1. If any of the equity interests in Applicant are sold and such sale results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of the Applicant, the relief afforded by any order granted on the Application would not apply to subsequent Bond offerings by the Applicant or any Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-6755 Filed 3-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16869; 811-5182]

Midwest Group State Tax Exempt Trust; Application March 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Midwest Group State Tax Exempt Trust ("Applicant").

Relevant 1940 Act Sections: Order requested under Section 8(f) of the 1940 Act.

Summary of Application: Applicant has requested an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on January 25, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application, or ask to be notified if a hearing is ordered. Any request should be in writing and should be received by the SEC by 5:30 p.m., on April 10, 1989. A request for a hearing should state the nature of the requestor's interest, the reason for the request, and the issues contested. Any person requesting a hearing should serve the Applicant with a copy of the request, either personally or by mail, and should send the request to the Secretary of the SEC, along with proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. A request for notification of the date of a hearing may be made by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 700 Dixie Terminal Building, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. Any person may obtain a copy of the complete application for a fee, either by going to the SEC's Public Reference Branch, or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was an Ohio business trust which registered as an open-end non-diversified management investment company under the 1940 Act on May 29, 1987. Applicant's registration statement under the Securities Act of 1933, filed on May 29, 1987, became effective on August 4, 1987 and covered several series.

2. The initial public offering of shares of the California Tax Free Intermediate Term Fund, the Indiana Tax Free Intermediate Term Fund, the Kentucky Tax Free Intermediate Term Fund, the Michigan Tax Free Intermediate Term Fund, the Ohio Tax Free Intermediate Term Fund, and the Pennsylvania Tax Free Intermediate Term Fund commenced on August 5, 1987. The remaining series covered by Applicant's initial registration statement, the Hawaii Tax Free Intermediate Term Fund, the New Jersey Tax Free Intermediate Term Fund, and the Texas Tax Free Intermediate Term Fund, never made a public offering of shares. An additional series of Applicant, the Ohio Tax Free Money Fund, commenced an initial public offering of its shares on October 22, 1987.

3. The public offerings of the Michigan, Indiana and Kentucky Tax Free Intermediate Funds were discontinued on April 25, 1988, and these series were liquidated by May 16, 1988 through a mandatory redemption program. The public offering of the Pennsylvania Tax Free Intermediate Fund was discontinued on August 5, 1988, which series was liquidated by August 31, 1988 through a mandatory redemption program. The public offerings of the Ohio and California Tax Free Intermediate Funds were discontinued on October 25, 1988, and these series were also liquidated by December 2, 1988 through a mandatory redemption program. Each of the foregoing redemption programs was authorized by Applicant's board of trustees. As of December 2, 1988, the only remaining series of Applicant was the Ohio Tax Free Money Fund.

4. On October 24, 1988, Applicant's independent trustees authorized it to enter into an Agreement and Plan of Reorganization with Midwest Group Tax Free Trust, a Massachusetts business trust (SEC File No. 811-3174), under which the Ohio Tax Free Money Fund would become a series of Midwest Group Tax Free Trust.

5. On December 16, 1988, Applicant mailed a Prospectus/Proxy Statement dated December 15, 1988 to the shareholders of the Ohio Tax Free Money Fund. The Prospectus/Proxy Statement and a Statement of Additional Information were filed with the SEC on December 21, 1988 (File No. 33-25564) pursuant to Rule 497(b) under the Securities Act of 1933. Other materials distributed to shareholders were incorporated into the instant application by reference to Pre-Effective Amendment No. 1 to Midwest Group Tax Free Trust's registration statement on Form N-14, filed with the SEC on December 12, 1988.

6. At a special meeting of shareholders held on December 30, 1988, the holders of a majority of the outstanding shares of Applicant's Ohio Tax Free Money Fund series approved: (1) The Agreement and Plan of Reorganization; (2) the investment advisory agreement between Midwest Group Tax Free Trust and Midwest Advisory Services, Inc.; and (3) Midwest Group Tax Free Trust's distribution expense plan. The Agreement and Plan of Reorganization was adopted as a plan of reorganization and liquidation within the meaning of Section 368(a)(1)(F) of the Internal Revenue Code of 1986.

7. At the close of business on January 3, 1989, 55,934,856 shares of beneficial interest, no par value, of Applicant's Ohio Tax Free Money Fund series were outstanding. The net asset value of such shares, in the aggregate and per share, was $55,931,598 and $1.00 respectively.

8. At the close of business on January 3, 1989, all of the assets and liabilities of the Ohio Tax Free Money Fund series of Applicant (the "Acquired Fund") were transferred to the Ohio Tax Free Money

Fund series of Midwest Group Tax Free Fund (the "Acquiring Fund"), in exchange for shares of the Acquiring Fund. The Acquiring Fund was a new series with no shares outstanding prior to the reorganization. Shares of the Acquiring Fund were distributed to shareholders of the Acquired Fund, thereby causing the liquidation of Applicant. The number and value of the shares of the Acquiring Fund distributed to shareholders of the Acquired Fund were identical to the number and value of the shares of the Acquired Fund owned by such shareholders.

9. Midwest Advisory Services, Inc., Applicant's investment adviser, is liable for all expenses incurred in connection with the reorganization and liquidation of Applicant. There are no securityholders of Applicant to whom distributions in complete liquidation of their interests have not been made. No brokerage commissions were paid in connection with the transfer of portfolio securities from the Acquired Fund to the Acquiring Fund.

10. Pursuant to Section 1746.15 of the Ohio Revised Code, Applicant filed with the Secretary of State of Ohio a verified copy of a resolution adopted by Applicant's board of trustees on January 20, 1989, thereby withdrawing as an Ohio business trust.

11. Applicant has not, within the past 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. Applicant has no assets, debts or liabilities which remain outstanding, is not a party to any litigation or administrative proceeding, and is not engaged in or proposing to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-6756 Filed 3-21-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of Hearings

[Docket 46180]

Western U.S.-Mexico Service Proceeding; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled proceeding will be held on April 6, 1989, at 10 a.m. (local time), in Room 111, Hearing Room B, International Trade Commission, 500 E Street, *Southwest*, Washington, DC., by the undersigned Chief Administrative Law Judge.

The parties are directed to submit one copy to each other and four copies to the Judge of (1) any proposals for changes in the evidence request contained in the Appendix to Order 89-3-34, (2) proposed procedural dates, (3) proposed stipulations, (4) a statement of the issues, and (5) a statement of position. This material shall be submitted on or before April 3, 1989.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 89-6790 Filed 3-21-89; 8:45 am]

BILLING CODE 4910-62-M

[Docket 46180]

Western U.S.-Mexico Service Proceeding; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge William A. Kane, Jr. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street SW., Washington DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 89-6791 Filed 3-21-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 89-020]

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC):

1. The subcommittee on Air Quality/Vapor Control/Recovery will meet on April 12, 1989 in the LUBBOCK room of the Marriott Hotel at Houston Intercontinental Airport at 18700 Kennedy Boulevard in Houston, Texas (713) 443-2310. The meeting will begin at 9:00 a.m. The agenda for the meeting follows:

(a) Chemical Transportation Advisory Committee (TSAC) Recommendations on Marine Vapor Control.

Attendance is open to the public.

Members of the public may present oral or written statements at the meeting. Additional information may be obtained from the Executive Director of TSAC at U.S. Coast Guard Headquarters, Room 2420, 2100 Second Street SW., Washington, DC 20593-0001 or by calling (202) 2677-0449.

Dated: March 16, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-6793 Filed 3-21-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89-40]

Monetary Penalty in Lieu of Suspension of Individual Broker's License No. 6483 Issued to James M. Woltman

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

ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner with the approval of the Secretary of the Treasury on February 23, 1989, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111.81 of the Customs Regulations, as amended (19 CFR 111.81), has decided to accept payment of a $7,000 penalty in lieu of pursuing the suspension of broker's license No. 6483 issued to James M. Woltman.

Dated: March 17, 1989.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 89-6695 Filed 3-21-89; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 54
Wednesday, March 22, 1989

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).

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Monday, April 3, 1989, 10:00 a.m.

PLACE: 1111 20th Street, NW., Suite 450, Washington, DC 20036.

STATUS: Closed pursuant to a vote taken March 16, 1989.

MATTERS TO BE CONSIDERED: Adjudication in the 1986 cable royalty fee distribution proceeding.

CONTACT PERSON FOR MORE INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, 202–653–5175.

Dated: March 17, 1989.

Edward W. Ray,

Chairman.

Copyright Royalty Tribunal

Certification of Closed Meeting

The General Counsel of the Copyright Royalty Tribunal hereby certifies, pursuant to 5 U.S.C. 552b(f)(1), and pursuant to § 301.14(b) of the Tribunal's rules, 37 CFR 301.14(b), that the Tribunal's deliberations concerning the hearing of the 1986 cable royalty fee distribution hearing scheduled to occur on April 3, 1989 (and from time to time thereafter up to 30 days as the Tribunal may, pursuant to 37 CFR 301.14(a), find appropriate) may properly be closed to public observation.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

5 U.S.C. 552b(c)(10) (adjudication)

37 CFR 301.13(i) (adjudication)

The recorded vote of each Commissioner taken March 16, 1989 on the question of a closed meeting is as follows:

Chairman Edward W. Ray—Yes

Commissioner Mario F. Aguero—Yes

Commissioner J. C. Argetsinger—Yes

It is anticipated that, in addition to the Commissioners of the Tribunal, the General Counsel and each of the Commissioners' confidential assistants will attend the Tribunal's deliberations.

Dated: March 17, 1989.

Robert Cassler,

General Counsel.

[FR Doc. 89–6891 Filed 3–20–89; 3:28 pm]

BILLING CODE 1410–09–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 17, 1989.

PLACE: On board MV Mississippi at foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Comander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 89–6860 Filed 3–20–89; 12:06 pm]

BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 18, 1989.

PLACE: On board MV Mississippi at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 89–6861 Filed 3–20–89; 12:06 pm]

BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 3:30 a.m., April 19, 1989.

PLACE: On board MV Mississippi at City Front, Foot of Crawford Street, Vicksburg, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 89–6862 Filed 3–20–89; 12:06 pm]

BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 21, 1989.

PLACE: On board MV Mississippi at Foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 89–6863 Filed 3–20–89; 12:06 pm]

BILLING CODE 3710–GX–M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, April 5, 1989.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW. Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the March, 1989.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUMMARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of Notice: March 15, 1989.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 89–6853 Filed 3–20–89; 12:06 pm]

BILLING CODE 7550–01–M

Corrections

Federal Register
Vol. 54, No. 54
Wednesday, March 22, 1989

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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Biologics Evaluation and Research and Center for Drug Evaluation and Research, et al.

Correction

In rule document 89-4516 beginning on page 8314 in the issue of Tuesday, February 28, 1989, make the following corrections:

§ 5.22 [Corrected]

1. On page 8315, in the third column, under § 5.22(a)(12)(iv), in the first line, "Division" should read "Divisions".

§ 5.50 [Corrected]

2. On page 8317, in the third column, in the heading of § 5.50, in the first line, "**OF**" should read "**TO**".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052E]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Expectorant Drug Products for Over-the-Counter Human Use; Final Monograph

Correction

In rule document 89-4517 beginning on page 8494 in the issue of Tuesday, February 28, 1989, make the following corrections:

1. On page 8495, in the third column, in the third complete paragraph, in the first line, "Guaifenesin" was misspelled.

2. On page 8499, in the first column, in the sixth line,"guaifenesin" was misspelled.

3. On page 8501, in the second column, in reference 22, in the third line, "Clearance" was misspelled.

4. On the same page, in the same column, in reference 26, in the first line, "Wojcicki" was misspelled.

5. On the same page, in the third column, in item 8, in the first line, "if" should read "of"; and in the second line "guaifenesin" was misspelled.

6. On page 8503, in the 2nd column, in the 10th line,"bronchitic" was misspelled.

7. On the same page, in the 3rd column, in item 9, in the 14th line,"judgment" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8242]

Income Tax; Diversification Requirements for Variable Annuity,Endowment, and Life Insurance Contracts

Correction

In rule document 89-4867 beginning on page 8728 in the issue of Thursday, March 2, 1989, make the following correction:

§ 1.817-5 [Corrected]

1. On page 8730, in the 2nd column, in § 1.817-5(a)(1), in the 38th, 39th, and 40th lines remove the phrase "shall be treated as ordinary income received or accrued by the policyholder".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 194

[T.D. ATF-271]

Occupational Taxes Relating to Alcohol, Tobacco, and Firearms

Correction

In rule document 88-10321 beginning on page 17538 in the issue of Tuesday, May 17, 1988, make the following correction:

§ 194.101 [Corrected]

1. On page 17552, in the second column, in § 194.101(a)(1), in the first entry of the listing, "$225.00" should read "$255.00".

BILLING CODE 1505-01-D

federal register

Wednesday
March 22, 1989

Part II

Environmental Protection Agency

40 CFR Part 80

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1989 and Beyond; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-3538-5]

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1989 and Beyond

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: Today's action promulgates the Phase I of a two-phase reduction in summertime commercial gasoline volatility. Depending on the area of the country and the month, gasoline Reid Vapor Pressure (RVP) must be 10.5 pounds per square inch (psi), 9.5 psi, or 9.0 psi beginning in the summer of 1989.

This action will significantly reduce volatile organic compound (VOC) emissions from evaporating gasoline, which are a significant contributor to the nation's serious tropospheric ozone problem. This action is being taken at this time in order for its benefits to be available during the 1989 ozone season.

These regulations also provide an interim 1.0 psi RVP allowance for gasoline containing about 10 percent ethanol, but no such allowance for methanol blends. A final decision on how to regulate blend RVP will be included in regulations covering the second phase of RVP control. EPA expects to finalize this second phase of volatility reductions in the near future.

EFFECTIVE DATE: This regulation becomes effective on April 21, 1989.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket No. A-85-21 by EPA. Public Docket No. A-84-07, established in support of EPA's assessment of air pollution regulatory strategies for the gasoline marketing industry, also contains considerable background information and has been incorporated into A-85-21. The dockets are located at: Central Docket Section (A-130), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, in Room 4, South Conference Center and may be inspected between 8 a.m. and 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

For information related to enforcement: Mr. Robert Kenney (EN-397F), Field Operations and Support Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Telephone: (202) 382-2659

For other information: Mr. Tad Wysor, Standards Development and Support Branch, Emission Control Technology Division, U.S Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4332.

SUPPLEMENTARY INFORMATION:

I. Introduction

This preamble will: (1) Review the background for these actions; (2) describe the need for ozone control; (3) describe the action itself; (4) discuss enforcement issues; (5) discuss the costs and benefits of this program; and (6) summarize the comments received on the proposal relative to this action and EPA's response to them, plus more detailed analyses of comments received on the impact of volatility controls on the natural gas liquids and small refiners. Except where noted in this preamble, the analyses supporting these assessments are found in the Draft Regulatory Impact Analysis (DRIA) and the Final RIA (FRIA) which includes the summary and analysis of comments not addressed in this preamble. The DRIA was placed in the docket at the time of the proposal and the FRIA was placed in the docket at the time this final rule was signed.

II. Background

Gasoline volatility and evaporative emissions controls and onboard refueling controls were proposed in two Notices of Proposed Rulemaking (NPRMs) on August 19, 1987 (52 FR 31274, hereafter referred to as the "volatility" NPRM or proposal, and 52 FR 31162, hereafter referred to as the "refueling" NPRM or proposal, respectively). Descriptions of earlier events and actions leading up to these proposals may be found in those notices.

Since the proposals, several related events have occurred. On October 27-29, 1987, EPA held a public hearing on both the proposed volatility and refueling control programs and heard testimony from about 40 parties. The Agency accepted written comments until February 11, 1988, and received a large number and wide diversity of comments (see Public Participation section, below).

Certain concerns about industry design trends for evaporative and refueling control systems prompted EPA to hold a public workshop to highlight those concerns and present modifications to EPA's test procedures which would resolve these concerns. EPA may propose appropriate test procedure changes in a separate rulemaking in the future.

EPA will continue to assess whether additional control of gasoline volatility, beyond the regulations promulgated today, is cost-effective and reasonable. Any additional regulation will follow. Today's final rule achieves the reductions possible without the installation of capital equipment. Further reductions in gasoline volatility will require sufficient leadtime for equipment installation.

III. Environmental Need for Control

In both the volatility and refueling NPRMs EPA described the human health impact of exposure to high ozone concentrations and the widespread nature of non-attainment of the current National Ambient Air Quality Standard (NAAQS) for ozone. We also reviewed the evidence of ozone's effect on forests, crops, and materials.

EPA's level of concern with the ozone problem has not diminished; the increase in ozone violations during 1988 has reinforced the need to implement new controls on VOC emissions, including the controls introduced today. Preliminary 1988 ozone exceedance data indicate that there will probably be more areas in non-attainment during the three-year periods including 1988 than the three-year period of 1982-84, when 73 areas failed to achieve the ozone NAAQS.[1] It remains clear that EPA and the states need to pursue additional VOC control. Given this clear need for ozone control in the near term, and since ozone is a problem primarily in the summer months, this program is being promulgated now to achieve emission reductions this summer.

As discussed below, the program of gasoline volatility controls promulgated today is extremely cost effective in comparison to other ozone control programs being considered.

IV. Description of Today's Action

EPA today promulgates moderate summertime volatility controls to begin this summer, during the time when ozone nonattainment problems occur. This Phase I of EPA's 2-phase program requires reduction of gasoline volatility nationwide (except for Hawaii and Alaska) according to a system derived from the current month-by-month volatility class system developed by the American Society for Testing and Materials (ASTM).

The ASTM system, developed to result in similar vehicle driveability

[1] EPA memorandum, "The Effect of Vehicle Running Losses on Future Ozone Non-Attainment," from Don Clay, Acting Assistant Administrator, to The Administrator, October 6, 1988.

characteristics in different parts of the country, tends to also result in roughly similar evaporative emissions in each region. In the volatility NPRM, EPA proposed that, for May 16 through September 15, reductions of 8.7 percent (1989–91) and 21.7 percent (1992 and later) from the ASTM class A, B, and C maximum RVP levels of 9, 10, and 11.5 psi, respectively be enforced. However, a more detailed analysis of the geographic location of non-attainment areas, their temperatures, and of fuel distribution patterns has made it possible for EPA to "fine tune" the ASTM system for RVP control purposes for the summer months. Chapter 2 of the FRIA addresses comments on a number of aspects of the proposed control system and describes EPA's development of the system enacted in this action. Some of that analysis is summarized in the following paragraphs.

The EPA volatility system better focuses the emission reduction where and when it is most needed. Under this revised system many states or parts of states were reclassified to the level of control proposed for the next higher volatility ASTM class for at least part of the summer.

Based on the new EPA classification system, this first phase of EPA's 2-phase program requires gasoline RVP to be reduced from current levels to 10.5, 9.5, or 9.0 psi, depending on the area of the country and the month (see the final regulations published with this preamble for a month-by-month list of RVP standards for each state). These latter two RVP standards represent a somewhat less percent reduction than the corresponding standards proposed in the NPRM (9.1 and 8.2 psi, respectively). The 9.0 psi standard represents no reduction in volatility in ASTM Class A areas, which currently appear to be at or below 9.0 RVP on average. (However, the federally enforced standard will prevent degradation of volatility in the near term.) These changes from the proposal result from EPA's assessment that the proposed reduction from 10.0 to 9.1 RVP in Class B areas and reductions below 9.0 RVP in Class A areas could not be achieved by all refiners without sufficient leadtime for capital investment as described in the FRIA. Comments on this issue, and on the feasibility of 10.5 RVP in Class C areas, are consistent with this assessment (see Final RIA for details). Additional control in all areas will be considered as part of the final rulemaking for Phase II of EPA's volatility control.

The date on which enforcement of RVP standards begins each year depends on the point in the distribution system. Except for 1989, enforcement begins on June 1 for retail stations and other end-users of gasoline. Except for 1989, enforcement begins on May 1 for all other points in the distribution system, including refiners and importers, pipelines, and terminals. Enforcement ends at all points in the system including service stations on September 16. These requirements differ from those in the proposal, which required compliance at all points in the distribution system between May 16 and September 15. The reasons for the change are discussed below and in the FRIA.

For 1989, enforcement for end users begins on June 1 or 100 days after publication of these regulations, whichever occurs later. Enforcement at all other points in the system during 1989 begins on May 1 or 70 days after publication, whichever occurs later. This delay provision is due to the first-year leadtime considerations described below.

Such a two-date system for beginning the compliance period will achieve essentially the same emission reduction as the proposed single-date approach, while more appropriately focusing the efforts of refiners on terminal compliance rather than on low-volume service stations. As described in the FRIA, this compliance period should result in the equivalent of roughly five full months of emission reductions (high-volume service stations will come into compliance shortly after terminals) and will also incur refinery-level control costs for roughly five full months of production. (In 1989 the period of control will be slightly shorter because of the delay in the initial date of enforcement).

As mentioned above, we expect that this first phase of volatility control will not require investment in new refining equipment. Refiners will meet the reduced RVP primarily by not adding as much butane to gasoline and by varying refinery process operating conditions to substitute less volatile gasoline components to replace fuel volume and octane quality. EPA estimates that it will take approximately 70 days for refiners and terminals to comply with today's volatility standards. EPA has determined that it takes an average of 45 days to transport fuel to terminals and "mix down" tankage to the level of the standards (see Chapter 1 of the FRIA). The additional time provided here is available for refiners which may require additional start-up or distribution time. As described in Chapter 4 of the FRIA, refiners can begin production of this fuel with very little preparation time because no capital investments are required. EPA believes that the additional 30 days for the rest of the distribution chain provides more than enough time to meet the standards (for example, API commented that only 2 additional weeks should be required for compliance at service stations). Thus, EPA believes that 70 days is an adequate amount of leadtime for refiners and terminals and 100 days is adequate for the rest of the chain.

As discussed in detail in the FRIA, the existing ozone problem has not diminished, indeed, the increase in exceedances of the ozone NAAQS during 1988 has reinforced the need for further controls. Most ozone exceedances occur during the summer months. Thus, to implement this program for as much of the 1989 ozone season as possible, EPA is promulgating the volatility standards today.

A further aspect of this action is to provide an interim RVP allowance of 1.0 psi for ethanol blends of approximately 10 percent by volume, or "gasohol", but not for methanol blends. (The definition of blends meeting this criteria was outlined in the NPRM and remains the same for this interim program.) The gasohol allowance begins immediately with the introduction of this RVP control program. A final decision on such an allowance for all blends will be included in rules covering the second phase of RVP control. This issue is discussed further in section VII.D. below.

EPA expects gasoline refiners, etc., to meet the RVP standard levels in-use; that is, they will have to take the quality of and the variability in their testing into account in producing their product. Refiners can minimize this compliance margin, while still maintaining a high degree of confidence in compliance, by performing multiple tests on their product, ensuring that their test laboratory regularly correlates with EPA's enforcement testing laboratory and by ensuring that their test laboratory regularly runs samples of known RVP to validate their test apparatus. Refiners could also achieve the same degree of confidence in compliance by increasing their RVP compliance margin and not following the above procedure. Therefore, EPA expects gasoline RVP to be slightly lower than the standards in-use, but the degree of which will depend on which approach most refiners take.

V. Summary of the Enforcement Mechanism and Analysis of Comments Thereon

This section provides a Summary and Analysis of Comments on the

mechanism that the Agency will use to enforce the volatility regulations. A more detailed summary and analysis is included as an appendix to the FRIA.

This section includes a discussion of the overall enforcement mechanism, including the type of compliance monitoring program that will be used by EPA, the locations at which RVP standards will apply, and the types of activities prohibited by the regulations. It also addresses liability and defense provisions, sampling procedures, RVP testing procedures, alcohol content testing procedures, and other enforcement-related regulatory provisions.

A. Overall Enforcement Mechanism

1. Compliance Monitoring Program

After considering three mechanisms to monitor compliance with RVP controls (self-reporting, in-field sampling and testing, and a combination of the two), the Agency proposed an enforcement mechanism based on in-field sampling and testing. Today's final rule maintains in-field sampling and testing as the RVP enforcement mechanism.

The Agency received several comments on this issue. The majority of comments supported in-field sampling and testing as the best approach. A few comments favored an approach combining self-reporting for parties upstream (importers and refiners) and in-field sampling downstream. For the following reasons, EPA continues to believe that an in-field sampling and testing program is the most effective means to detect violations and to assure that the emission reduction benefits estimated for this control program are actually achieved.

The biggest disadvantage to self-reporting in the context of RVP regulation is the lack of any viable means to verify RVP test results; commenters were unable to provide EPA with any recommendations for an effective cross-check mechanism.

The principal argument made by the commenters in support of upstream self-reporting was that it would be less resource intensive than a monitoring system that would involve on-site inspections by EPA at refiner/importer facilities. However, EPA's experience with the lead phasedown program demonstrated that a self-reporting system would burden EPA with other resource intensive activities, including making difficult determinations of which parties should be reporting to EPA, processing large amounts of data, and correlating a self-reporting scheme with a standard which varies state by state and month by month. Furthermore, experience in the lead phasedown program has taught EPA that the inclusion of blenders who add RVP boosters in a self-reporting system would significantly increase EPA's workload and the number of violations because of these entities' unfamiliarity with regulatory programs. Finally, despite the fact that a cross-check mechanism did exist in lead phasedown, EPA has found that a substantial number of violations still go unreported.

In sum, EPA believes that a self-reporting RVP enforcement program would divert Agency resources to administrative and data processing activities with little environmental benefits.

2. Locations at Which Standard Applies

The proposed rule would have applied the RVP standard to gasoline (including alcohol-blend fuels) at all points in the distribution network at which they are sold, supplied, offered for sale or supply, or transported. These points include (but are not limited to): Refinery shipping tanks, importer shipping tanks, pipeline and other common carrier facilities, bulk terminals, bulk plants, service stations, and other facilities at which gasoline or alcohol-blend fuels are dispensed to motor vehicles. Today's final rule adopts this aspect of the proposal.

EPA received many comments on this issue. However, most comments addressed where EPA should concentrate enforcement as opposed to where the RVP standard should be applicable. A majority of comments supported focusing enforcement efforts upstream in the distribution system (refiners and importers) or upstream and midstream (especially at bulk terminals). A few comments supported concentrating enforcement only at midstream facilities. On the other hand, many comments supported enforcement at all points in the distribution network. Even those comments which favored concentrating enforcement upstream and/or midstream acknowledged that some type of monitoring, such as spot checks, would be necessary downstream.

EPA believes that imposing the RVP standard on all points in the distribution network is necessary to provide the best safeguard against illegal product reaching motorists, and will result in the greatest likelihood of achieving expected environmental benefits. Monitoring compliance upstream is desirable because there are fewer locations upstream, and each inspection will generally cover more product than at downstream facilities. More importantly, when violations are found upstream, the illegal product can be taken out of distribution early in the process before reaching consumers. Finally, to a great extent, parties upstream are already monitoring the RVP of gasoline they import or refine. Monitoring compliance downstream is also necessary because it is the only way that EPA can monitor the addition of RVP boosters during distribution after the gasoline leaves a refinery or importer facility.

EPA believes that applying this standard to all points in the distribution network will place the burden of compliance equally on all parties in a position to affect the RVP control of fuel, and will result in better quality control by everyone in the distribution chain. Moreover, if the standard is applicable to all points in the chain, EPA will have the greatest flexibility to target inspections where violations are most likely to occur and where their deterrent effect will be the greatest.

One commenter expressed concern about how EPA will classify product when conducting midstream and upstream inspections. Because the regulations apply the RVP standard upstream, the commenter feared that EPA could hold a party (*e.g.*, a refiner or importer) liable for the sale, offer for sale, supply or transport of product with RVP which exceeds the applicable standard even though the party intended that the product would be further blended before it would be sold as gasoline to motorists.

The commenter urged that EPA modify the proposal to ensure that blendstock will not be treated like finished gasoline. It suggested that EPA could avoid blendstock classification problems by providing that a party who sells, supplies, exchanges, or physically delivers product which it intends to be further blended before being sold as finished product will be subject to the RVP standards unless it obtains a certification from the buyer/receiver of the product. The certification would state that the buyer/receiver understands that the product may be non-conforming and that the buyer will not sell or supply the product as finished gasoline unless or until it is blended to meet RVP standards, or the buyer/receiver obtains an equivalent certification from a subsequent buyer.

With regard to classification of product, EPA has decided not to change the current definition of "gasoline" in the fuels regulations (40 CFR 80.2(c)), which defines this term as "any fuel sold in any State for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline." However, in response

to the above commenter's concerns, as a matter of enforcement policy a party will not be held liable by the Agency for violating product which may arguably meet the regulatory definition of gasoline if the following requirements are met (which include the commenter's suggestion that a certification be obtained from the buyer/receiver of the product): (1) The product is clearly labeled as blendstock and the evidence supports this classification; (2) the label clearly states that the product may not comply with Federal RVP standards; (3) some aspect of the product's quality (other than the RVP) supports the party's claim that it intended the product to be further blended before being sold, supplied, etc., as finished product (*e.g.*, the octane is higher or lower than product typically sold as regular or premium grade gasoline)[2]; (4) the seller, supplier or transporter of the product has obtained a written certification from the buyer/recipient of the product that the buyer/recipient understands that the product may be non-conforming and that the buyer/recipient will not sell or supply the product as finished gasoline unless or until it is blended to meet federal RVP standards, or the buyer/receiver receives equivalent certification from a subsequent buyer; and (5) the party has no knowledge or reason to believe that the product will not be further blended to comply with the applicable RVP standard before being sold, supplied or transported as finished product.

When violations are found at a retail outlet or wholesale purchaser-consumer facility, the above-described defense will not be available. However, if an upstream party meets all of the above criteria, EPA may determine that such evidence supports a finding that the party did not cause the violation. The party would still be required to meet the other elements for a defense set forth in the regulations.

With regard to distributor/reseller liability for violations at retail outlets or wholesale purchaser-consumer facilities, if a distributor/reseller alleges that it sold or transferred the product as blendstock, and it meets the above five criteria, EPA may make a determination that the distributor/reseller did not cause the violation. The distributor/reseller would still be required to meet the other elements for a defense as set forth in the final regulations.

[2] Where the octane of product labeled blendstock is an intermediate level (*e.g.*, for unleaded gasoline between 87 and 91 octane), EPA will scrutinize the blendstock classification and transactions very closely.

The commenter also expressed concern that the regulations as proposed may subject refiners to liability for product which does not comply with Federal RVP standards despite the fact that the product is destined for export to a foreign country or is simply in storage.

Because gasoline is defined in existing § 80.2(c) of the regulations as "any fuel sold in any State * * *", gasoline which is exported is not covered by the volatility regulations. However, EPA will assume that all gasoline found in the United States is intended for domestic sale and thus subject to the RVP standards unless the product is clearly labeled as for export only, and the evidence supports this classification. The label should further clearly state that the product may not comply with Federal RVP standards. If such product enters the domestic market (*e.g.*, is on route to or at a distribution facility that is supplying fuel domestically, or at a retail outlet or a wholesale purchaser-consumer facility) and is found to exceed the applicable RVP standard, all parties will be presumed liable as set forth in the regulations. However, EPA will consider this evidence in determining whether a party caused the violation.

With regard to the storage of product, a refiner or importer will not be held liable for product which does not comply with the applicable RVP standard if it can show that the product is truly being stored and is not being sold, offered for sale, supplied, offered for supply, transported or dispensed. However, once gasoline leaves a refinery or importer facility, a party can no longer escape liability by claiming that the product was simply in storage. Although product may temporarily come to rest at some point after leaving a refinery or import facility, the intent of the regulations is to cover all gasoline being distributed in the marketplace. Once product leaves a refinery or importer facility it is in the marketplace and as such is in the process of being sold, supplied, offered for sale or supply, or transported.

Another related issue is how EPA will determine the applicable RVP standard for gasoline it samples and tests upstream from service stations. The regulations as proposed and promulgated define the applicable RVP standard as the RVP standard applicable to the geographic area and time period in which the gasoline is intended to be dispensed to motor vehicles. Where such area and time period cannot be determined the applicable standard will be assumed to be the most stringent RVP limit for that volatility season (i.e., the standard for Class A areas).

One commenter recommended that EPA' set forth in the regulations an affirmative obligation on parties upstream to label the product with the intended time and place of sale. EPA believes that it is not necessary to impose a labeling requirement on all parties. Those parties who wish to protect themselves can do so by clearly designating the intended time and place of sale. When conducting investigations, EPA will review any such designation, along with shipping documents (and any other documentation provided to EPA relevant parties) concerning where and when the party intended the product to be dispensed to motor vehicles. The burden will be on parties to provide clear evidence on this issue, or else the presumption of the most stringent standard will apply.

Several commenters who were opposed to downstream monitoring pointed out that when violations are found downstream, it will be more difficult to dispose of the product than when the violation is detected at a refiner/importer facility. EPA recognizes that remedying violations downstream will generally be more difficult than at a refinery or importer facility. However, EPA believes that this will be mitigated in part by EPA's compliance monitoring program upstream. The Agency anticipates that by applying the standard to upstream facilities, and conducting inspections upstream, there will be more quality control early in the distribution process, resulting in fewer violations at downstream facilities. For those violations that are detected downstream, there do exist methods for remedying the violations, which include pumping out product and sending it back to a terminal where it can be further blended to comply with the applicable RVP standard, or re-routing the product to a geographic area with a different RVP standard in which the product would be in compliance. In some cases, the product may be brought into compliance at the facility found to be in violation by the addition of a specified quantity of low RVP gasoline at that facility. While in some cases remedying the violation will be more difficult than in others, any remedial action taken by regulated parties will be taken into consideration by EPA in settlement negotiations for mitigation of the statutory penalty for the violation.

3. Prohibited Activities

The final rule also includes a minor clarification of the types of activities listed in § 80.27(a) that are subject to the

volatility regulations. The proposal provided that regulated parties may not "sell, offer for sale, supply, offer for supply, or transport" gasoline whose volatility exceeds the applicable standard. In today's final rule, the word "dispense" has been added to the list of regulated activities to make it clear that it is a violation for any of the listed parties to dispense gasoline with excessive volatility into motor vehicles. The proposed language was intended to fully cover the introduction of gasoline into motor vehicles. However, because the dispensing of gasoline was explicitly regulated in the Agency's unleaded fuels regulations (*e.g.*, 40 CFR 80.22(a)), EPA is including the word "dispense" in the final volatility regulations to make it clear that the volatility regulations prohibit this activity as well.

B. Liabilities and Defenses

1. Background

The proposed volatility liability provisions were patterned closely after the liability scheme used in the Agency's unleaded fuels regulations. In general, parties would be presumed liable for violations detected at their own facilities. Where violations are found midstream or downstream (i.e., at carrier, distributor, reseller, retailer, or wholesale purchaser-consumer facilities), vicarious liability would be presumed for certain parties upstream in the chain of distribution. Like the Agency's unleaded fuels regulations, where the facility is operating under the corporate, trade or brand name of a refiner, the refiner would be held vicariously liable for the violation. Common carriers would be presumed liable only for violations detected at their facilities. Where the violation is detected at a facility downstream from the carrier, the carrier would be liable only where it actually caused the violation. The proposed regulations set forth defenses for all parties who are presumptively or vicariously liable for RVP violations. The following paragraphs summarize what parties would be liable under the proposal for violations detected at each point in the distribution network.

For violations found at a refiner or importer facility, the refiner or importer would be exclusively liable.

If the violation is detected at a distributor or reseller facility, the distributor or reseller would be presumed liable. If the distributor or reseller operates under a refiner's corporate, trade or brand name, that refiner would also be held vicariously liable for the violation. If the distributor does not operate under a refiner's corporate, trade, or brand name, the actual refiner(s) or importer(s) of the gasoline would be presumed liable. Any carrier of the gasoline would also be liable if it caused the product to exceed the standard.

Carriers are presumed liable for violations detected at their facilities. In addition, the actual refiner(s) or importer(s) of the product found to be in violation would be presumed liable for the violation.

When violations are detected at retail outlets, the retailer and the distributor or reseller who sold the violating product to the retail outlet (i.e., the product contained in the retailer's underground storage tank) would be presumed liable for the violation. In addition, where the retail outlet is operating under a refiner's corporate, trade, or brand name, the refiner would be vicariously liable. Carriers would be liable for violations found at retail outlets only where they actually caused the violation.

Violations detected at wholesale purchaser-consumer (WPC) facilities would be treated in the same manner as violations detected at retail outlets.

In today's final rule, EPA is making two noteworthy changes affecting liabilities and defenses. First, EPA is modifying the defense available for distributors and resellers. The second change involves EPA's classification of ethanol blenders, who technically fit within the regulatory definition of refiner because they produce gasoline but whose production activity consists only of the addition of ethanol to a base gasoline. Aside from these and a few other minor changes discussed below, the remainder of the liability and defense sections in today's final rule are identical to the proposal.

2. Distributors and Resellers

When violations are found at retail outlets, the proposal would have imposed liability on distributors and resellers who supplied the violating product, and provided that the distributor or reseller would have a defense only where it could show: (1) The violation was not caused by the distributor/reseller, or its employees or agents; and (2) records with RVP test results showing that the product met the applicable standard when delivered to the retail outlet. The final rule modifies the proposed defense. Instead of requiring distributors/resellers to provide test results showing that the gasoline found to be in violation met the applicable standard, the distributor/reseller must (1) provide documentation from the party from whom the gasoline was received (or the party who produced or imported the product) which represented to the distributor/reseller that the gasoline was in compliance with the applicable standard when delivered to the distributor/reseller, and (2) demonstrate that it has an oversight program such as periodic sampling and testing of product. As in the proposal, the distributor/reseller must also show that it or its employees or agents did not cause the violation. These three elements for a defense are now listed at § 80.28(g)(3) and apply to violations detected at distributor/reseller facilities as well as to those found at retail outlets and wholesale purchaser-consumer facilities.[3]

This modification to the proposal has been made by the Agency in response to comments it received from petroleum marketers regarding liability for distributors/resellers. Several commenters were opposed to the requirement that distributors/resellers provide test results as part of the defense, arguing that testing each batch of gasoline would impose unreasonable costs and burdens on distributors/resellers and would slow down the distribution process. In lieu of a testing requirement these commenters recommended that distributors and resellers be afforded a defense where they are able to provide documentation from the refiner or importer representing to the distributor/reseller that the product was in compliance with the applicable standard at the time it was delivered to the distributor/reseller.

EPA continues to believe that a defense which requires distributors and resellers to provide test results showing that the gasoline found to be in violation met the RVP standard at the time it was delivered by the distributor/reseller to a retail facility would result in the most effective RVP quality control. However, the Agency also recognizes that such a testing requirement would impose new costs and additional burdens on distributors/resellers who have not been required to test each batch of delivered product under the Agency's unleaded fuels regulations. In addition, the

[3] Proposed § 80.28(g)(3) provided a defense only for violations detected at distributor/reseller facilities, while proposed § 80.28(g)(6) provided a defense for violations detected at retail outlets and WPC facilities. The final rule combines these defenses in one paragraph and makes them uniform. Because the distributor/reseller would already need to be periodically testing product to establish a defense for violations detected at retailer/wholesale purchaser-consumer facilities, this change should not create additional burdens for distributors and resellers. Overall, the promulgated defenses should be significantly less burdensome for distributors and resellers than the proposed defenses.

Agency recognizes that because of the current unavailability of a test procedure which yields quick and dependable results (i.e., a field screening test) a defense which requires that distributors test each batch of gasoline could result in distribution delays.

On the other hand, EPA believes that limiting the defense to documentation by the distributor/reseller showing that the product was in compliance when received by it would result in minimal quality control. The reliability of documents alone, without test results to support them, is questionable. Tests by the distributor/reseller of the product as it leaves the distributor/reseller facility are the only means to ensure that the RVP of the gasoline has not been altered during distribution. Without such test results it will be more difficult for the Agency to determine where the violation occurred.

Today's final rule imposes less stringent requirements on distributors/resellers than those in the proposal, but it is not as lenient as that called for by some commenters on the proposal. In addition to the paper certification advocated by such commenters, the final rule requires an oversight program which includes periodic testing of product. Such an oversight program will not cost nearly as much or be nearly as burdensome as testing each batch, but will provide significantly more quality control than paper certifications alone.

EPA's experience with enforcement of the unleaded fuels regulations indicates that requiring a regulated party to conduct an oversight program such as periodic sampling and testing of product is a workable approach. The Agency has deliberately used broad language in provisions establishing such a program as a defense in order to allow the party to determine what type of quality control (and what frequency of sampling and testing) is necessary under its specific circumstances. For example, if a party is aware that there is a higher rate of violations in a specific marketing region, or if the party suspects that a later party in the distribution network is somehow causing violations, the party should have a more vigorous oversight program in that region or with regard to that other party (or locations supplied by that party). Likewise, a party should have tighter quality control in areas where it believes violations would be more likely to occur. This approach will also allow the Agency the flexibility to respond to specific enforcement needs.

3. Ethanol Blenders

The other significant change in today's final rule involves the classification and treatment of ethanol blenders. Under the proposed regulations, which did not separately define blenders or give them special treatment, a person who blends gasoline components (such as alcohol) with finished gasoline and transports or stores the resulting product would be both a "refiner" and a "distributor" (as defined in § 80.2 (i) and (l), respectively). The blender would thus be subject to the liabilities and defenses for both of these types of parties. The Agency requested comments as to whether this treatment is appropriate.

The Agency received many comments on this issue. Several commenters argued that since alcohol blenders are like traditional refiners because they produce a new fuel, they should be held to the same liabilities and defenses as refiners. One commenter proposed that blenders be held to the liabilities and defenses of both distributors and refiners. Another commenter said that blenders should be subject to both distributor and refiner liabilities and defenses, and that where the liabilities and defenses are in conflict, they should be held to the more stringent.

The majority of comments were from ethanol blenders, all of whom were opposed to subjecting blenders to refiner liabilities and defenses. They pointed out that because blenders create a new fuel, to establish a defense under the proposal and to protect downstream parties from liability, blenders (like refiners) would have to test each batch of gasoline before delivering it to the next party. The commenters claimed that testing each batch would be so costly and administratively burdensome that alcohol blenders would be forced out of the market.

The commenters explained that 95 percent of ethanol blending is done at terminals in tank trucks. To ensure a defense blenders would have to test each blend in each truck, which would mean testing each grade of gasoline in each truck compartment. Because each truck only carries a few thousand gallons, the cost per gallon to test each batch would far exceed the cost of testing for refiners because each test by a refiner would generally cover a much greater volume of gasoline. Moreover, the commenters argued that the sampling process would require special training and skills which are hardly within the range of a tank truck driver. Finally, because no field test currently exists, samples would have to be sent to a laboratory for test results. The truck driver would then have to wait for the lab test to come back before he could deliver the gasoline to a retail outlet.

As an alternative to EPA's proposal, the commenters proposed the following treatment for ethanol blenders. Because 10 percent ethanol when added to a base gasoline increases its RVP by about 1.0 psi, instead of testing each batch of alcohol blend, blenders could obtain a certification from the manufacturer of the base gasoline showing that such fuel meets the applicable RVP standard. In addition, the blender could certify that the proper amount of ethanol (10 percent) was added to the base gasoline. In addition to establishing a defense for the ethanol blender, these certifications could also be transferred to the buyers of the blend, assisting them in their defense. One commenter added that EPA could also require that blenders conduct random spot testing of outgoing product.

In response to the comments it received on this issue, in today's final rule EPA is modifying the proposal and providing a separate defense for ethanol blenders. To accomplish this, EPA is adding two new definitions to the Part 80 fuels regulations. The first new definition, at § 80.2(u), defines an "ethanol blending plant" as a refinery at which gasoline is produced solely through the addition of ethanol to a base gasoline without altering its quality or quantity in any other manner. An "ethanol blender" is defined at § 80.2(v) as any person who owns, leases, operates, controls or supervises an ethanol blending plant. These regulatory definitions carve out a special subcategory of refiner for persons who produce gasoline solely through the addition of ethanol and a special subcategory of refinery for facilities at which such production takes place.

Persons who fall within the definition of ethanol blender will then be treated separately under the liability sections. Sections 80.28 (c) and (d) now include ethanol blending plants as facilities at which violations may be detected. The liability provisions also explicitly list the ethanol blender (if any) as a party that would be presumed liable when violations are found at a distributor/reseller facility, an ethanol blending plant, a carrier facility, a retail outlet, or a wholesale purchaser-consumer facility. More importantly, the defense provisions now set forth a special defense for ethanol blenders at § 80.28(g)(6).

The defense for ethanol blenders in large part tracks the defense for distributors and resellers, and incorporates the recommendations made by ethanol blenders. To establish a defense, an ethanol blender (like distributors and resellers) will have to: (1) Demonstrate that the violation was not caused by him or his employee or

agent; (2) provide documentation from the refiner at whose refinery the base gasoline was produced, the importer at whose facility the base gasoline was imported, or the carrier, reseller or distributor from whom the base gasoline was received representing to the blender that the base gasoline met the applicable RVP standard; and (3) demonstrate that it has a quality control program such as periodic sampling and testing of product that it sells, supplies, offers for sale or supply, or transports. In addition, the blender must certify that no more than 10 percent ethanol (by volume) was added to the base gasoline.

Because most ethanol blending is done in tank trucks, EPA recognizes that testing each new blend to establish a defense would be more costly and administratively burdensome for ethanol blenders than for other refiners, who generally produce gasoline in larger volumes and have more sophisticated operations. The Agency is less convinced by the argument that if a blender adds only ethanol, and the base gasoline has already been tested and certified as meeting the appropriate RVP standard, there is less of a need from a quality control standpoint to test the new blend. Because ethanol blenders are refiners who do in fact create a new fuel and who may not have existing sophisticated quality control programs, EPA believes that paper certifications (of the type called for by commenters) alone are insufficient. The Agency is also requiring a quality control program, with periodic testing of product, because it will provide some assurance that the base gasoline did in fact meet the RVP standard, that the proper amount of ethanol was added and that the product was not altered in any other way. A periodic testing program will therefore provide better and more reliable quality control than paper certifications alone, but will cost less and not be as burdensome on blenders as testing each batch.

The defenses described above apply during the time period in which the "first-step" RVP standards (with their interim 1.0 psi additional allowance for ethanol blenders) are in effect. The Agency is considering limiting this special treatment for ethanol blenders to low volume blenders in its second-step volatility rulemaking (if the 1.0 psi allowance is continued in that rulemaking). This change is being considered because it appears (from reports submitted under the lead phasedown program) that a few blenders are significantly larger than the rest and would appear to have the capabilities of refiners.

Under the promulgated regulatory definitions, there may still be cases in which a potentially liable party meets both the definition of "ethanol blender" and that of another regulated party. For example, a party may be both an ethanol blender because of its blending activities and a distributor because of its transportation of the blended product to a retail outlet. Under certain circumstances, an ethanol blender could also be a reseller or a branded refiner. In such cases, where a party may be liable for a specific violation as both an ethanol blender and another type of regulated party, the Agency will require that the party meet only the defense provided for an ethanol blender in order to rebut the presumption of liability. Such a party would, therefore, have to meet the defense specified in § 80.28(g)(6) rather than the defense provided for the other type of party (e.g., distributor/reseller defense in § 80.28(g)(3); branded refiner defense in § 80.28(g)(4)).

4. Other Regulatory Changes

EPA is making three other minor changes regarding the defenses.

First, to make out a defense both the proposal and today's final rule provide that regulated parties who are found presumptively liable must generally show that they or their employees or agents did not cause the violation (most parties must also meet other elements of a defense). For refiners, the proposal provided that refiners can demonstrate that the violation was caused or must have been caused by another party by means of "reasonably specific showings, by direct or circumstantial evidence." This provision has been promulgated as proposed. See 40 CFR § 80.28(g)(4)(iv). In an effort to make this language regarding causation consistent throughout the regulations, in § 80.28(g)(7) of the final rule EPA is also providing this same treatment to all parties who must show that they did not cause a violation.

Second, EPA is adding clarifying language to the carrier defense (§ 80.28(g)(1)(i)). The proposal required that for a defense carriers must demonstrate (in part) that they have documents from the refiner or importer at whose refinery or import facility the gasoline was produced or imported which represented to the carrier that the gasoline was in compliance with the applicable standard when delivered to the carrier. The final rule provides that such documents may also be received by the carrier from the (other) carrier, reseller, or distributor from whom the gasoline was received. This change is being made because in practice carriers often receive products from other carriers, resellers, or distributors. It also makes the carrier defense language consistent with the distributor defense language at § 80.28(g)(3)(ii).

Finally, EPA is making certain minor revisions to the proposed refiner defense language. Section 80.28(g)(4)(iii)(B)–(D) provides that to establish one element of a defense a refiner must in certain cases show that it had a contractual agreement with the party who actually caused the violation, and that such agreement was designed to prevent such a violation by that party and that the refiner made reasonable efforts (such as periodic sampling) to insure compliance by that party with the contractual obligation. EPA has revised the phrase "such as periodic sampling" to read "such as periodic sampling and testing" to clarify EPA's intent that a periodic sampling program includes testing the product as well. This revision makes this portion of these provisions consistent with the language proposed and finalized for the carrier defense in § 80.28(g)(1)(ii) and the distributor defense promulgated in today's final rule at § 80.28(g)(3).

In addition, EPA has included references to ethanol blenders at appropriate places in §80.28(g)(4)(iii)(B), (D), (E), and (F). The main purpose of these changes is to provide an additional defense to branded refiners for violations caused by the actions of such blenders. To escape liability in such cases, branded refiners would have to establish the same defense as for violations caused by resellers and distributors. Other changes to these provisions reflect the fact that an ethanol blender may be the recipient of gasoline from a terminal.

5. Carriers

The Agency received several comments regarding presumptive liability for carriers. The proposal provided that carriers would be presumed liable for violations detected at their facilities. To rebut this presumption, carriers would have to provide documents from the refiner or importer at whose refinery or import facility the gasoline was produced or imported which represented to the carrier that the gasoline was in compliance with the applicable RVP standard when delivered to the carrier. In addition, the carrier would have to demonstrate that it had an oversight program, such as periodic sampling and testing of product that it carries, which shows that the carrier is attempting to ensure that the product which it carries meets the applicable RVP standards.

Finally, the proposal provided that the carrier would have to show that it or its employees or agents did not cause the violation. For violations detected at facilities downstream from the carrier, the proposal would have held a carrier liable only when the carrier actually caused the violation.

The trucking industry, along with several refiners, opposed presumptive liability for carriers for violations at carrier facilities, and felt that carriers should only be liable when they actually caused the violation. The commenters argued that testing imposes costs and burdens on carriers who do not have title to the product, and have no incentive to purposefully alter it. One commenter argued that the taking of samples is unsafe, and could also be viewed as an unlawful conversion since the carrier does not own the product. Another commenter felt that such parties should only be liable if they are unable to provide EPA with the name of the shipper whose product they are transporting.

On the other hand, a state environmental agency that has experience enforcing volatility regulations, supported presumptive liability for carriers as proposed. The state agency argued that carriers should only be afforded a defense if they provide EPA with test results showing that the gasoline found to be in violation met the RVP standard when the carrier delivered it to the next party.

The Agency is promulgating the liability provisions for carriers as proposed because it believes that presumptive liability, with the defenses as proposed, will provide some degree of RVP quality control without imposing unreasonable costs and burdens on carriers. EPA has learned through its experience with the unleaded fuels regulations that it is very difficult to enforce regulations which do not include a presumption that a party is liable for a violation. The Agency has also found that parties who are presumed liable are generally more willing to cooperate and provide it with information it needs to complete its investigation, resulting in a better ability by EPA to locate and penalize the party who actually caused the violation.

Even assuming that a carrier who does not have title to the product has less incentive to alter the quality of the gasoline than the party who owns it, the carrier's handling of the product can nevertheless result in violations. For example, batches of gasoline with different RVP levels can be inadvertently or negligently commingled in storage tanks at a pipeline facility. Also, product that was intended to be delivered to one RVP area (e.g., an area with a Class C standard) may be intentionally or negligently re-routed by the carrier to another RVP area (e.g., an area with a Class B standard). This re-routing of the gasoline could result in the gasoline not complying with the applicable standard for that area.

Finally, EPA believes that the inclusion of an oversight program as part of the defense is preferable to providing a defense where carriers need only submit documents from the shipper who hired them certifying that the product met RVP standards. Because a quality control program does not necessitate testing each batch of gasoline, but envisions a program such as periodic testing, the final rule will not impose extraordinary expenses and burdens on the carrier. EPA believes that the quality control that would be gained from an oversight program would significantly outweigh the additional expense that such a program would entail and justifies any precautions a carrier would need to follow should it choose to protect itself from liability with a periodic testing and sampling program. (Other concerns of commenters regarding carrier liability are addressed in the final RIA).

C. Sampling Methodologies

A sampling methodology prescribes the procedures that must be followed to obtain a valid sample for performance of an RVP test. A sampling methodology is necessary to assure that a sample's volatility is representative of the whole product being sampled. Such a methodology should also provide a clear standard for enforcement purposes, alleviating disputes that may result when there is no methodology or an ambiguous methodology. Industry quality control efforts are assisted by providing notice of the sampling methodology that will be followed by the Agency in its RVP enforcement program.

The sampling methodology proposed in the NPRM set forth at 40 CFR Part 80 Appendix D was essentially identical to that used by the California Air Resources Board (Cal. Admin. Code Tit. 13, R. 2261). CARB's methodology is a combination of the ASTM sampling methodologies for gasoline products and a service station nozzle sampling procedure developed by CARB.

The proposed ASTM methodologies would be used by the Agency in sampling gasoline and alcohol blend fuels at facilities such as refineries, import facilities, blending facilities, pipelines, bulk terminals, and bulk plants. These sampling procedures include bottle sampling, tap sampling, and manual line sampling. The proposed nozzle sampling procedure would be used at service stations and similar dispensing facilities (e.g., fleets).

In the NPRM (52 FR 31309) specific issues were raised by EPA on which comments were requested. The following is a summary of changes made in the final rule due to comments received on, and EPA's further analysis of, these issues. Except as discussed below, the sampling methodologies in 40 CFR Part 80 Appendix D are being promulgated as proposed.

(1) The Agency stated that it was considering an alternative nozzle sampling technique in which, instead of placing the sample container in a chilling medium while being filled and stored (as in the CARB procedures), the container would remain at ambient temperatures prior to pre-testing cooling. This alternative was considered because during its evaluation of the different nozzle sampling techniques EPA took samples with and without chilling and found no difference in RVP measurements. An oil company commented that proper sampling procedures and appropriate container selection are more important in obtaining accurate RVP results than chilling the sample. An auto company commented that it does not chill the sample or container at the point of sampling. Based on these comments and its own study on this issue, EPA is promulgating the final rule without the chilling requirement.

(2) As another alternative nozzle sampling technique, the Agency stated that it was considering use of an EPA-developed technique described in the NPRM (52 FR 31298, col. 1) instead of the CARB nozzle sampling procedure. The same auto company recommended use of the CARB nozzle sampling methodology because it is widely used and accepted. In addition, the auto company stated that the EPA-developed technique does not appear workable to evaluate a large number of service stations. An oil company recommended that EPA utilize only ASTM-approved procedures for purposes of sampling to determine compliance under these regulations. Although testing conducted by EPA on samples taken using the CARB sampling technique and the EPA-developed technique showed essentially the same results, based on the comments received EPA has decided at this time not to use the EPA-developed technique for nozzle sampling. Instead, the Agency is promulgating the CARB nozzle sampling procedure which has been extensively used and shown to be effective in California's RVP control

program. ASTM has not adopted a procedure that can be used effectively at service stations and the Agency believes compliance monitoring at such facilities is too important to await such development when a proven technique is already available.

(3) The Agency asked for comments on whether a more simplified procedure could be developed for the ASTM and CARB sampling methodologies since they are complex and detailed. An auto company stated that ASTM test methods should be used. Any proposed changes by EPA may reduce the confidence level of resulting test data because the methodology has not been properly statistically validated. An oil industry trade association, noting a potential conflict between the proposal and ASTM D–4057, recommended that the regulation "specify only the sampling techniques permitted (e.g., tap sampling, bottle spot sampling, running sample, etc.) and references to the procedures in ASTM D–4057 or other applicable industry standards. In instances where a sampling procedure is not covered by an industry standard, a description of the sampling procedure is appropriate in the regulation." Another auto company stated simplification could be accomplished by eliminating the sample cooling techniques.

The recommendation that sample cooling be eliminated has been accepted for nozzle and tap sampling procedures, as set forth in sections (1) and (6). In addition, proposed sections 12.2 and 12.7 have been eliminated from the final rules because they dealt with cooling baths and procedures. Also, promulgated § 12.5 (proposed § 12.6) has been revised to eliminate the use of open containers to sample a closed tank since a cooling bath procedure is apparently needed to use such containers and the final rules have eliminated the use of all cooling procedures during sampling. The proposed rules did not include any other sample cooling requirements (except as part of the RVP test procedures).

Because the other comments received did not identify specific ways in which to simplify the sampling methodologies, EPA is not able at this time to simplify the NPRM sampling metholodologies in the final rule. However, the Agency continues to be interested in this area and will review any future suggestions from interested parties. EPA is not incorporating by reference industry standards because it cannot delegate rulemaking authority to private groups and because it is making changes to current ASTM procedures.

(4) In a study conducted by EPA, the volatilities of refrigerated and non-refrigerated samples were found to not be significantly different from one another over the total storage period of almost two months. Based on this study, the Agency asked in the NPRM whether refrigeration of samples should be required. An oil company stated that samples can be stored at unrefrigerated temperatures provided that the containers are tightly sealed. An auto company stated that it has not conducted tests in this area. Based on the comments received and the above-noted study on this issue, EPA has determined that refrigeration is not mandatory but that special care should be taken to insure that the caps on sample containers are tightly sealed.

(5) The Agency has conducted some testing on the issue of what volume of fuel should be purged from a fuel dispenser prior to the taking of a sample. Results indicated no difference between samples taken without any purge volume and samples taken with a three gallon purge volume. In the NPRM EPA asked for comments on how much purge volume is necessary. An auto company stated that purging prior to sampling is required. This commenter questioned whether a three gallon purge is sufficient, but has no data at this time to substantiate what purge quantity is required and recommends further testing. Another auto company stated that purging is necessary unless fuel has been delivered through the system for a period of time, it is at moderate temperature, and is not vented. Based on the comments received, and its own analysis, EPA has determined that some amount of purging is needed before nozzle sampling is done. However, EPA's testing indicates that no specific amount of purge volume is required. Therefore, the Agency will require sampling to be conducted from a nozzle after a vehicle has just received some quantity of gasoline. This is the same practice used by CARB and it should in most cases result in at least a 3-gallon purge. The inspector will record the number of gallons dispensed from the nozzle immediately before sampling.

(6) The Agency stated in the NPRM that it was considering the elimination of a cooling bath for tap sampling. Instead the sample container could be chilled during sampling by placing it in an ice chest, as proposed for samples collected by the nozzle sampling procedure. Comments were requested on whether any cooling of a sample (via cooling bath or ice chest) obtained by tap sampling is necessary.

CARB commented that it has data which shows that sampling without cooling does not make a measureable difference in RVP results when compared with sampling using a cooling system. An oil company also stated that no chilling is needed to obtain a sample by the tap sampling method. Based on these comments, comments received on issue (1) above, and on testing EPA has conducted which showed slight differences in RVP readings between samples which were and were not chilled, EPA is promulgating the final rule without any chilling requirement for tap sampling.

(7) The Agency stated in the NPRM that it was considering increasing the maximum amount of fuel to be sampled to 90 percent of the sample container. This would be a change from a maximum of 85 percent specified in ASTM D–4057. One oil company suggested that the sample container fill level not be changed to a 90 percent maximum. One auto company had no objection to raising the maximum fill level from 85 percent to 90 percent. However, another auto company stated that the volume of the sample in the container when the sample is taken is not critical as long as it is over 70 percent full. If the sample is over 80 percent full after chilling, the excess over 80 percent must be removed and the sample shaken to properly aerate the fuel before the test. Laboratory experience has shown that if the container is less than 70 percent or more than 80 percent full, volatility data may be significantly affected. If containers are filled to 90 percent as EPA suggests, this commenter recommended that after chilling the excess over 75 percent should be removed.

Based on the comments received, EPA is promulgating the final rule without changing the maximum fill level to 90 percent. Such a change is not needed for an effective sampling program and legitimate concerns have been raised about its impact.

D. Testing Methodologies

A testing methodology is needed for the measurement of gasoline and gasoline-alcohol blend RVP levels to ensure that a standard technique is used for enforcement of the volatility regulations. In addition, a testing methodology for alcohol content in gasoline-alcohol blends is needed since the Agency is promulgating a different RVP standard for such blends which contain certain amounts of ethanol.[4]

[4] The alcohol testing methodologies being promulgated today will also apply to determinations of methanol content should a different RVP standard for blends containing this type of alcohol be prescribed by the Agency as part of the "second-step" RVP standards.

Industry quality control efforts are assisted by providing notice of the testing methodologies that will be followed by the Agency in its RVP enforcement program.

1. Volatility

Two RVP testing methodologies were proposed in the NPRM. Proposed Method 1 is almost identical to the proposed ASTM P-176 test method, which is a dry version of the existing ASTM D-323 RVP test method.[5] In Method 1 the gasoline chamber of the vapor pressure apparatus is filled with a chilled sample and connected to the air chamber at 100 °F. The apparatus is immersed in a bath at 100 °F and is manually shaken periodically until a constant pressure is observed on the gauge attached to the apparatus. The gauge reading, suitably corrected, is reported as the RVP of the sample.

Proposed RVP test Method 2 uses the Herzog testing equipment and is patterned after Method 1. The difference is that the sample bomb (the container holding the sample) is automatically rotated to provide controlled and consistent mixing of the bomb. This procedure also uses a bath temperature of 100 °F and has other similarities to the "dry" P-176 ASTM method.

In the NPRM (52 FR 31309-10) specific issues were raised by EPA on which comments were requested. Except as discussed below, the volatility methodologies in 40 CFR Part 80 Appendix E are being promulgated as proposed.

1. Enforcement tolerance. The Agency asked for comments on what enforcement tolerance(s) should be allowed in the enforcement of this regulation. The NPRM stated that a range of enforcement tolerances (based on RVP test reproducibility values) could be used by the Agency. Comments were received from oil companies and auto manufacturers recommending tolerances ranging from 0.55 psi to 1.33 psi.

On this issue, as stated in section IV of this notice, above, EPA has determined that gasoline refiners and other regulated parties will be expected to meet applicable RVP standards in-use. In other words, they must take test variability into account in producing (and marketing) gasoline and cannot rely on the Agency to automatically provide an enforcement tolerance in addition to the RVP standard. For example, if the applicable RVP standard is 10.5 psi and the Agency finds a sample of gasoline to exceed this standard (e.g., 10.6 psi), this will be considered a violation of the regulatory standard that could subject liable parties to an enforcement action. This is the same manner in which the Agency's motor vehicle emission control standards are enforced.

EPA's experience in its RVP testing program has been that consistent results can be obtained with careful testing procedures. In its analysis of RVP test results, the Agency has found that the repeatability of testing conducted with the dry Herzog method is approximately 0.30 psi. EPA expects future precision to be as good as, or better than, this value. In order to ensure quality results, the Agency lab conducts daily RVP tests of "pure" components with known RVP values (e.g., cyclopentane).

The final regulations provide a partial defense to certain parties who can demonstrate test results evidencing that gasoline found to be in violation was in compliance with the applicable RVP standard when it left that party's hands. See, for example, 40 CFR 80.28(g)(4)(i). In administering this provision, the Agency will look at the quality of a party's testing program to determine how much weight will be given to test results in a particular case. For example, EPA will place a higher value on test results if: (1) multiple samples (rather than a single sample) have been taken from a batch and tested; (2) the party's laboratory has run correlation tests with EPA's laboratory, an independent laboratory, or a national exchange program; and/or (3) a party's testing program includes regular verification using a component of known RVP.

2. The Agency asked for comments on whether to adopt the Southwest Research Institute (SRI) automatic method as an additional RVP testing methodology. One oil company commented that EPA should consider the SRI automatic RVP analyzer once it is published as an ASTM standard. Another oil company supported the adoption of ASTM P-176, which includes the SRI method.

EPA has determined that since the SRI method has not been formally adopted by ASTM or fully evaluated by EPA, this method will not be adopted at this time as an additional RVP testing method. For similar reasons, the Agency is not promulgating any RVP test methods other than those proposed as Methods 1 and 2. If additional methods are developed after the final rule publication and demonstrated to be as accurate and effective as those being promulgated, the Agency intends to promptly publish an NPRM requesting comments on the test method and to promulgate the method as an official test procedure, if feasible.

3. The Agency also asked for comments on the following modifications to Method 1. EPA's decision on the appropriateness of making each modification is included below.

a. In section 6.4.5, the Agency considered specifying the time in which the sample is cooled to 32-34 °F to insure that the vapor in the container has been cooled. The Agency requested submittal of any test data available on this issue. One auto company supported specifying a time to reach 32-34 °F and recommended that samples remain at this level for a minimum of 8 hours. Another auto company stated that it leaves fuel samples in refrigeration for at least 2 hours before running volatility tests. Because neither of the comments submitted provided any test data to show a need to cool a sample for a specified period of time, the final rule will not require a specific amount of time to cool the sample. Rather, the procedure specified in the NPRM, which is used by both ASTM and CARB, will be included in the final rules. This procedure is to directly measure the temperature of a similar liquid at a similar initial temperature in a like container placed in the cooling bath at the same time as the sample. The Agency believes that this procedure is adequate to assure that sufficient cooling has taken place.

b. Concerning section 7.3, EPA asked for comments on eliminating the option of putting the fuel chamber into an ice bath for cooling, and instead requiring that the cooling be done in a refrigerator. One auto company supported the use of refrigeration in place of the ice bath for cooling. Another reported that it no longer chills fuel chambers due to the number of samples being analyzed. The Agency has determined that it will not make it mandatory to cool the fuel chamber in a refrigerator because the practice of using either an ice bath or a refrigerator has been used successfully in the past and because no comments were received to indicate that a difference in test results occurs when using one particular cooling method versus the other.

c. In section 7.4, the Agency suggested changing the time that the air chamber is immersed in the water bath from 20 minutes to 10 minutes. Proposed Method 2 included a 10 minute immersion time. One auto company concurred with this suggestion as long as there is adequate stirring in the waterbath. Another commented that if 10 minutes is long

[5] This method has subsequently been adopted by ASTM as Annex A 2 of the D-4814 test method.

enough to get both the air in the air chamber and the air chamber itself to the proper temperature, then it is acceptable to make the change, but that this would have to be demonstrated with comparative tests.

The Agency has found that in doing testing with the Herzog equipment a stable pressure is reached in about five minutes. Therefore, the Agency believes that having the air chamber immersed for 10 minutes in Method 2 will not adversely affect test results, and this test element is being finalized as proposed. However, no data exists to show that results will not be adversely affected if the time is changed from 20 minutes to 10 minutes in Method 1. Therefore, in Method 1 the time will remain 20 minutes.

d. In section 8.2, the Agency proposed to allow 30 seconds for assembly of the apparatus instead of the 10 second ASTM requirement and asked for comments on this change. An auto manufacturer opposed an increase to 30 seconds because it believes such an increase may affect accuracy. Another reported that the longer the delay for assembly of the apparatus, the greater the chance that the apparatus will not be at the proper temperature. Therefore, this commenter said that EPA should comply with industry practice. CARB recommended that the 10 second ASTM requirement be used by EPA.

Based on the comments received and additional investigation by the Agency, EPA has decided to use the 10 second requirement specified by ASTM. The final regulations reflect this change. In addition, proposed section 8.2 appeared in Method 2 with a slight difference in terminology from the same section in Method 1. Because there was no significant difference between the two provisions, for the sake of uniformity the language of proposed Method 1 is now included in the final version of both methods.

e. Concerning section 8.5, comments were requested on using hot water and acetone to rinse the apparatus, and of drying the apparatus either by blowing dried air or by pulling a vacuum. An auto manufacturer believes that current practices with rinsing solutions are proper. In particular, this commenter believes that acetone must not be used because it will affect the RVP value. Another manufacturer indicated that how the apparatus is cleaned is not important as long as it is as clean as it would be after using the original method. The Agency notes that the current ASTM practice uses acetone and that the method discussed in the NPRM has been used successfully in EPA testing. Therefore, EPA believes that this method will prepare the testing apparatus adequately for the next test and is including it in the final rule. Sections 8.5 of Methods 1 and 2 have been revised to include both the blowing of dried air and the pulling of a vacuum as proper means to dry the testing apparatus (the proposal erroneously included only one of these means in each method).

f. Comments were requested on the need for gauges and transducers to be calibrated against a dead weight tester or mercury manometer and whether, when using the mercury manometer, the temperature corrected density should be used. An auto manufacturer recommended using a mercury manometer to calibrate gauges. The same manufacturer indicated that if EPA uses calibration charts equating gauge pressures in psi to millimeters of mercury, it will circumvent the need to make a temperature correction on the mercury density. Another auto manufacturer commented that the density changes of mercury for normal ambient temperature changes would not significantly change the pressure measurements of the mercury manometer. The Agency believes that good laboratory practice should be used in calibrating the gauges. Thus, there is not a specific requirement in the final rule on how to calibrate the test equipment.

2. Alcohol

Three alcohol content laboratory testing methods were proposed in the NPRM. Under proposed Method 1, gasoline samples are extracted with water prior to analysis on a gas chromatograph (GC). The extraction eliminates hydrocarbon interference during chromatography. A known quantity of isopropanol is added to the fuel prior to extraction to act as an internal standard. Results are calculated and reported by data reduction software in the GC using peak area, retention times and other data obtained during the run.

Proposed Method 2 is a direct GC injection technique utilizing a single column (30 to 60 meter length) which is capable of resolving the individual alcohols without interference from hydrocarbon fuel components. Little sample handling is necessary, resulting in potentially more accurate results. The NPRM stated that this method would be similar to that proposed in ASTM P-176 Appendix XII.

Proposed Method 3 is a two-column backflush GC method in which the sample is injected and loaded onto a primary column. This column retains the alcohols but does not retain the lighter weight hydrocarbon fractions of the fuel. After the lighter fractions are rinsed out of the primary column, the carrier gas flow through the column is reversed, the alcohols and heavier hydrocarbon fractions are loaded onto a secondary column and are individually separated for analysis. The NPRM stated that this method would be similar to that proposed in ASTM P-176 Appendix X9.

Comments on the proposed alcohol test methods include the following. An auto manufacturer stated that the proposed alcohol test procedures may be used to determine compliance as long as it is understood that the reproducibility limits would be the limits allowed to determine compliance. Another auto manufacturer supports proposed Methods 2 and 3 but believes that Method 1 is the least accurate of the three methods and should not be adopted. CARB commented that if EPA uses a GC then CARB would accept it.

Appendix F of the final rules contains two methods for the analysis of alcohol content. Promulgated Method 1 is identical to proposed Method 1. Promulgated Method 2 is similar to proposed Method 3. Promulgated Method 2 is almost identical to the recently adopted ASTM D-4815.[6] Proposed Method 3 was based on proposed ASTM P-176 Appendix X9, from which ASTM D-4815 was developed. Both ASTM D-4815 and ASTM P-176 Appendix X9 are two column back flush methods which use a GC for analysis of the alcohol content of a sample. Although there are certain differences between the proposed and adopted ASTM procedures, the changes made in the adopted procedures are mainly refinements of the proposal. Changes in ASTM D-4815 include: (1) Allowance of a flame ionization detector (FID) as well as the thermal conductivity detector (TCD) included in ASTM P-176 (FIDs are generally more available, more economical, and more sensitive than TCDs); (2) use of an internal standard, a well accepted means of controlling variances in results due to differences in technique; and (3) allowance for the use of other columns in addition to the packed, stainless steel columns described in ASTM P-176. The Agency believes that the changes made by ASTM and in today's final rule will result in a more effective test procedure

[6] The only significant change made by the Agency to ASTM D-4815 is inclusion of a requirement in sections 1.2 and 14.2 that samples found to contain more than 10% alcohol should be diluted to less than that concentration and retested. Other changes include deletion of certain footnotes, substitution of a cross-reference to the EPA sampling procedures, and correction of typographical errors.

that can be conducted on a more widely available range of instruments.

Proposed Method 2 (a single column method) is not being promulgated. This method was modeled after ASTM P-176, Appendix X11, which has been abandoned by ASTM. This method will not be promulgated because no data is available to support its use. Additionally, it is not needed at this time because two other methods are being finalized in this notice.

The Agency is aware that there may be other methods for alcohol content analysis that use a GC and a single or dual column method. If additional methods are developed after final rule publication and demonstrated to be as accurate and effective as those being promulgated, the Agency intends to promptly publish an NPRM requesting comments on such methods, and to promulgate the methods as official test procedures if feasible.

E. Other Regulatory Provisions

The volatility NPRM also proposed: (1) Clarification of certain existing regulatory definitions of parties involved in the gasoline distribution network; and (2) marketing requirements for gasoline-alcohol blends if such blends are granted a 1.0 psi RVP allowance. As described more fully below, these regulatory provisions are being promulgated as proposed. The summary and analysis of comments document that has been placed in the rulemaking docket as an appendix to the FRIA includes responses to any comments received on these proposals.

1. Definitions

Definitions of most parties involved in the gasoline distribution network have already been adopted by the Agency at 40 CFR 80.2, and these will be applicable to liability determinations for the volatility regulations. The volatility NPRM proposed two clarifications of these regulatory definitions. First, the NPRM proposed to expand the definition of "distributor" in 40 CFR 80.2(l) to include a person who transports gasoline between an import facility (any facility owned, leased, or controlled by an importer) and a retail outlet or wholesale purchaser-consumer facility. Second, the NPRM proposed to add a new definition of "carrier" at 40 CFR 80.2(t), to be defined as any distributor who transports petroleum products without taking title to the product or altering either the quality or quantity of the product. The Agency believes that both of these changes (in conjunction with the liability provisions promulgated today) will result in a more equitable allocation of responsibility for regulatory compliance, and is promulgating these provisions as proposed.

In response to public comments, the Agency is also promulgating new definitions of "ethanol blending plant" and "ethanol blender" at 40 CFR 80.2 (u) and (v), respectively. These new definitions are discussed more fully in section V.B.3 of this notice, above.

2. Gasoline-Alcohol Blend Marketing Requirements

The volatility NPRM proposed certain requirements that would apply to the content and marketing of gasoline-alcohol blends should the Agency grant a temporary or permanent 1 psi RVP allowance for such blends. As discussed elsewhere in this notice, today's final rules provide such an allowance on an interim basis for gasoline-ethanol blends commonly known as gasohol. Such blends must contain at least 9% ethanol (by volume) and their maximum ethanol content may not exceed any applicable waiver conditions under section 211(f)(4) of the Clean Air Act.

In today's notice, the Agency is also taking final action to promulgate the marketing requirements as proposed for ethanol blends. In order to qualify for the additional 1 psi allowance, pumps from which such fuel is dispensed at retail outlets and wholesale purchaser-consumer facilities must indicate that the fuel being dispensed contains ethanol (and must specify its percentage concentration). Invoice and other delivery documents must be similarly labeled, retained for at least one year, and available for inspection during that period by the Agency. The Agency believes that these requirements will aid enforcement and will not be unduly burdensome on regulated parties.

Because the "first step" RVP regulations do not include an allowance for methanol blends, the marketing requirements promulgated today do not apply to such blends. However, should the "second step" RVP regulations that the Agency intends to promulgate in the near future contain an allowance for methanol blends, the Agency intends that these marketing requirements would be extended to such blends as well.

VI. Analysis of Economic and Environmental Impacts

EPA's analysis of the economic and environmental impacts of today's action draws from both the Draft RIA and more recent evaluations performed by EPA and collected in the Final RIA. The recent analyses reflect EPA's response to comments on the proposal as well as new data and improved methods which EPA has developed or obtained.

A. Economic Impacts

This first phase of EPA's 2-phase volatility control program will require changes in gasoline refining that will increase the cost of gasoline production. However, because these Phase I volatility standards will not require new capital investment, the cost to refiners will stem from the need to substitute more expensive processes and/or gasoline components for relatively cheap butane. This Phase I program involves no requirements for vehicle-based emission control improvements, and thus no costs will be incurred by vehicle manufacturers. The following paragraphs summarize our revised analyses of refinery costs.

The refinery cost modeling work performed for EPA by Bonner and Moore Management Science for this final analysis is improved in several ways over the modeling done for the NPRM. (The latest modeling results were placed in the docket shortly after the NPRM was published and referenced in the Notice of Public Hearing (52 FR 33438).) First, it was possible to incorporate directly into the model the estimated effect on refineries of reducing the demand for gasoline under a range of volatility-control scenarios. (RVP control reduces the amount of purchased gasoline which is lost to evaporation, thus reducing the volume of gasoline sold.) Second, the latest modeling was able to estimate the impact of a drop in the price of butane on refiners' raw material purchases and on the demand for the natural gas liquids (NGL) industry's products. A final improvement was to extend the range of the original modeling (which evaluated RVP reductions of only one and two psi) to evaluate reductions of one, two, and three psi. (This latter change has improved the accuracy of EPA's estimates of refinery costs at lower levels of RVP control, although this is not an issue for the moderate reductions adopted today.)

In addition to having Bonner and Moore improve the modeling itself, in response to comments EPA modified its use of the modeling results in three important ways to better reflect reality. First, we excluded the results from Bonner and Moore's Region 4 (California) because the model's predicted base case fuel contained unrealistically high levels of butane and low levels of pentane. Second, the projection of future RVPs absent controls was revised to reflect 1987

levels. Third, nationwide projections of fuel consumption were updated.

EPA also applied the results of the modeling in a more sophisticated manner. Using the revised state-by-state RVP standards discussed above, EPA determined the current and final RVP level of each state's fuel by month for each control scenario and applied a refinery cost to each case. This allowed the determination of a separate cost for each of the three control levels (9.0, 9.5, and 10.5 RVP).

EPA projects the refinery cost of the Phase I program to be $247 million dollars per year, which can be expressed as 0.54 cents per gallon of controlled gasoline during the summer control periods. Offsetting this cost will be savings for consumers of about $104 million per year, or 0.23 cents per gallon resulting from increased fuel economy as gasoline's energy density increases and as less fuel is lost through evaporation. (As will be described in the next section, the emission recovery credit is based on the DRIA estimates. The inclusion of running losses would increase this savings dramatically.) On a discounted basis, the increased fuel cost to consumers will be about $14.50 per vehicle lifetime and will be offset by savings of about $6.10, resulting in a net cost of about $8.40 per vehicle over its life. It should be pointed out that the refinery cost estimated here assumes no capital investment. Over the longer term, these RVP reductions would be much cheaper.

The moderate RVP reductions of this Phase I program will somewhat reduce the market for butane as a gasoline component. As discussed under Public Participation and Impact on Small Entities below, EPA believes that while there will be a reduction in revenues for NGL facilities, this effect will not be severe. Since the lost revenues will be translated primarily into increased revenues or economic savings for other parties, this is not considered a societal cost but rather a transfer payment from one sector of the economy to another. The refinery costs estimated by Bonner and Moore were calculated using a constant butane price, so no credit was taken for refineries being able to purchase butane at lower prices.

Some additional imported crude oil may need to be purchased and processed in order to replace part of the butane displaced by this Phase I program. However, because much of the butane will not need to be replaced since it was lost through evaporation anyway, EPA does not expect the effect on imported crude to be substantial. For example, the fraction of butane in gasoline that is lost to evaporation before reaching the engine (as described below under "Public Participation," this may be substantial on some hot days) need not be replaced. In other words, because less evaporation will occur, gasoline demand will be reduced. The only butane which needs to be replaced is the butane actually used by the engine. In addition, Bonner and Moore estimates that much (if not all) of the butane displaced from direct use in gasoline will be used in the production of other gasoline components, especially after time allows investment in equipment to utilize additional butane. (Bonner and Moore did not account for the likely increase in the production of methyl- and/or ethyl tertiary-butyl ether (MTBE and/or ETBE) which would also allow butane to indirectly be used in gasoline.) Overall, we estimate any increase in imported crude oil due to this Phase I program to be at most 81,000 barrels/day, and much less if the control of running losses were considered.

B. Environmental Impacts

EPA's environmental impact analysis for this Phase I volatility control program is based primarily on the analysis presented in the DRIA. Two modifications were made to maintain consistency with the refinery cost analysis: (1) estimates of vehicle miles traveled were increased to be consistent with fuel consumption projections, and (2) projections of future RVPs absent controls were reduced. Since the time of the proposal, the Agency has continued to refine both our methods of estimating evaporative VOC emissions and our understanding of the sources of these emissions. These improvements have the effect of significantly increasing our estimates of current and future evaporative emissions (see Chapter 4 of FRIA). While these latest estimates are considered preliminary, EPA is very confident that any further revisions will result in emission inventories and reductions due to RVP control that are much greater than the DRIA estimates. Thus, EPA believes the use of the DRIA results for this Phase I action probably understates the actual emission reductions available from the program.

EPA intends to continue to improve its estimates of the effect of RVP and vehicle controls as it continues development of the second phase of volatility control. For the purposes of this Phase I regulation, however, the figures presented here more than justify the need and cost effectiveness of this program. The net effect of improvements to the DRIA analysis would tend to improve the effectiveness of the program (*i.e.*, credit the program with achieving greater VOC control than the DRIA would indicate). Thus, if this program is cost effective using the DRIA results, it would be even more so using revised emission reduction figures, as we demonstrate below.

Based on the DRIA analysis, we project that this Phase I RVP control program will reduce VOC emissions nationally by 0.674 million tons per year (on an annual basis), or 3 percent of total VOC emissions from all sources. In the 61 non-California, non-attainment areas EPA projects a reduction of 0.310 million tons per year, or 5 percent of total VOC emissions in these areas. For comparison purposes, the preliminary data for running losses suggest that the volatility standards promulgated here would result in 2.0 million tons of VOC control nationwide and 0.86 million tons of VOC in non-California non-attainment areas (see Chapter 3 of the FRIA).

C. Cost Effectiveness

EPA has re-calculated the incremental cost effectiveness for the Phase I RVP control program based on the projections of costs and emission reductions summarized above. The methodology we have used in this updated analysis is essentially the same as the incremental cost effectiveness methodology used in the volatility NPRM (comments in this area are addressed in the Final RIA). We focus today on cost effectiveness values comparable in concept to the "adjusted" values in the NPRM. Specifically, the calculations are performed in such a way as to make possible valid comparisons of seasonal RVP control with year-round, non-attainment area only ozone control programs. As described in the Final RIA, emission reductions were first expanded to those which would occur if the program were year-round and then adjusted downwards to include only non-attainment area reductions. Finally, a $250 per ton credit was added to acknowledge a conservative value for attainment area emission reductions.

Table I presents the cost effectiveness of the Phase I program in the year 1990 for the overall nationwide program. For comparison, the table also shows separately the cost effectiveness on a class by class basis. (The volatility class designations A, B, and C correspond to areas which will receive 9.0, 9.5, and 10.5 RVP fuel, respectively, during the summertime control period. The actual geographic areas differ slightly from ASTM's volatility class areas, as discussed above.) Only Class B and C figures are shown, since all surveyed Class A areas are currently at or below

9.0 RVP on average and little, if any, cost or benefit should occur.

TABLE 1: INCREMENTAL COST EFFECTIVENESS OF PHASE I RVP CONTROL IN 1990

[Dollars per ton]

Nationwide	236
Class B	576
Class C	165

Although the cost per ton of VOC control in Class B areas is somewhat higher than that in Class C areas, the values are still well below those for essentially all potential VOC control programs. EPA believes this Phase I program represents a very attractive step towards addressing the ozone non-attainment problem in the near term.

VII. Public Participation

The vast majority of public comments on the volatility NPRM were primarily directed at the second, more stringent phase of RVP control proposed at that time. With the exception of comments relating to enforcement, relatively few comments were focused specifically on the proposed Phase I program promulgated today. It is the latter set of comments—those which relate to the Phase I program—which are summarized and addressed below and/or in the Final RIA. EPA will address comments pertaining to Phase II of RVP control at the time we promulgate those regulations.

The comments relevant to this Phase I program generally fall into the following categories: (1) Disagreement with EPA's analysis of refinery costs and other costs and credits, (2) disagreement with EPA's analysis of current and/or future VOC emissions and air quality, with or without RVP control, (3) disagreement with aspects of EPA's cost effectiveness evaluation methodology, (4) concerns with EPA's proposed enforcement plan, (5) comments on the impacts of providing or not providing an RVP allowance for gasohol, (6) the impact of RVP control on the natural gas liquids industry, and (7) suggestions for alternative control programs.

A. Economic Impact

Although commenters from the refining industry preferred RVP standards that would simply cap volatility at the current ASTM levels, API specifically recommended alternative RVP reductions to 10.5, 9.5, and 9.0 RVP. No refiner expressed serious concern about the feasibility of producing complying fuel at about these levels, nor demonstrated the need for capital investment (see Chapter 4 of the FRIA for details).

API modified Bonner and Moore's refinery modeling results to estimate a refinery cost for RVP reductions to 10.5, 9.5 and 9.0. Their estimated total annual costs exceed the revised EPA refinery cost presented above by roughly a factor of two. However, when the other revisions to the NPRM contained in this Phase I rule are taken into account and insufficiently supported adjustments are removed, there is essentially no difference between API's and EPA's estimates. However, EPA remains open to further comment concerning our analysis of the cost of the second phase of RVP control pending receipt of comments referred to in section II above. Moreover, for the purpose of this Phase I action, even if EPA accepted API's original cost figures, it would not change our decision to implement these RVP controls.

B. Environmental and Cost-Effectiveness Analysis

Comments on EPA's analysis of the environmental impact and the cost effectiveness of the volatility NPRM, as well as EPA's responses to those comments, are discussed in the final RIA.

C. Enforcement System

The comments and EPA's responses relating to the proposed system of enforcing RVP controls are outlined above under "Summary of the Enforcement Mechanism and Analysis of Comments Thereon" and in an appendix to the final RIA.

D. RVP Control and Alcohol Blends

As indicated above, EPA has decided to implement Phase I of its proposed volatility control program for gasoline and alcohol blends. Methanol blends will have to meet the same RVP standard as gasoline; ethanol blends (*i.e.*, gasohol) will have to meet standards 1.0 psi higher.

In the NPRM, EPA requested comment on three approaches to regulating gasohol and methanol blend RVP. EPA is postponing its ultimate decision on how to treat ethanol and methanol blend RVP. Those decisions will address all comments concerning air quality, economics, and other related issues. In the interim, EPA has decided to maintain the status quo with respect to both types of blends.

Methanol blends (in unleaded gasolines, since only these fuels are addressed in section 211(f) of the Clean Air Act as amended) currently have to meet the ASTM RVP specifications for gasoline. This requires that a special gasoline base stock be used and this will not change under this Phase I rule.

Gasohol RVP is currently unregulated. Practically speaking, however, 10 percent ethanol is added to typical gasoline and the result is a blend somewhat less than 1.0 RVP higher than the base gasoline. As outlined in the NPRM, and supported in the comments received, even by the ethanol industry, to continue the non-regulation of gasohol RVP once gasoline RVP was reduced would create an incentive to use high RVP gasoline for blending with ethanol, effectively creating a loophole in the standard. Thus, to maintain the status quo for gasohol (*i.e.*, splash blending in typical gasoline), some control must be placed on gasohol RVP. Based on the NPRM and an analysis of the comments (see the Final RIA), the option of granting a 1.0 RVP allowance for gasohol under the Phase I rule will continue to allow splash blending, but prevent the use of gasolines not meeting the gasoline RVP standards from being used a base stock. EPA will, as noted above, address how to treat alcohol blend RVP in a final fashion with our analysis of the second phase of RVP control.

E. Impact on Natural Gas Liquids Industry

The potential economic impact of a volatility control program on the NGL industry was the subject of extensive comment from companies that condense liquid butanes and other NGLs from raw natural gas; their trade organization, the Gas Processers Association (GPA); and individuals holding natural gas interests.

The vast majority of comments were based on an assumption that RVP controls would eliminate the use of butanes (particularly normal butane) in the production of gasoline during the summer. Given this premise, they foresaw devastating impacts on the natural gas processing and producing industries. Such comments are primarily aimed at the more stringent long-term RVP control program proposed for 1992 and later. However, the Phase I program under discussion here will still have some effect on the butane market.

After reassessing this issue, EPA cannot agree with the basic premise of most comments; *i.e.*, that the high-value use for butane in summertime gasoline will be completely lost, glutting the market with cheap butane that would displace lower-value fuels and petrochemical feedstocks. While we agree that butane will drop somewhat in price, Bonner and Moore's modeling of

the refinery and petrochemical industries illustrates that the industry dynamics which are likely to follow RVP control are very different from those suggested in the comments.

Bonner and Moore's results indicate that after a relatively moderate drop in price (about 11 percent or less), refiners would themselves absorb the surplus of butane created by RVP controls. Rather than using the butane directly as a gasoline additive, most refiners will shift their production patterns to reduce butane production within the refinery and emphasize processes which use butane as a feedstock for high-octane, low-volatility gasoline components (such as alkylate). In doing so, it appears that the current market for butane in gasoline production will largely remain intact. Bonner and Moore reached this conclusion despite the fact that their model did not consider the expansion of MTBE production. With existing or new isomerization and dehydrogenation capacity, normal butane can be a feedstock for MTBE and potentially for ETBE. We expect the current growth in such capacity to continue and probably increase under a volatility control scenario as more butane becomes available during the summertime months. This added demand for butane should further reduce the price impact on butane.

Given the 11 percent (or less) price reduction for butane estimated above, we also cannot agree that the deep and broad consequences predicted in the comments will occur (including widespread closings of gas processing and related facilities and the shutting in of natural gas thus not processed for commerce). While we do not believe the size of the butane market will change significantly, we do believe there will be a loss of up to 11 percent of butane revenues to gas processors for 5 months of the year. This effect should not be severe both because the decrease in butane prices should be relatively small (as noted above) and because for most companies operating gas processing facilities, butane accounts for only a fraction of their business (*e.g.*, less than 1 percent to 40 percent of revenues). For a likely maximum loss in revenues of around 11 percent, loss of revenues overall should be no more than 5 percent, and typically much less. In the short term, the largest impact is expected to be on imports of butane, which have been growing in recent years.

If a domestic gas processing facility is so economically marginal as to be threatened by even this small drop in butane prices, we believe there would be renegotiation of the nature of the contract between the processor of the natural gas and the producers serviced by the processing facility. Since gas producers need to have the condensate removed in order to market their gas, we expect that most producers would prefer to receive a reduced percentage of the gas processing income than to stop production. Only in a case where the producer was unusually dependent on revenues from the processor does it appear that a producer may not renegotiate to keep the processor economically viable. From the perspective of a gas producer, it appears that the normal fluctuations in natural gas prices should be much more problematic than the loss of revenues due to this action. The effect is certainly much less severe than the loss of revenues that occurred in 1986, when crude oil prices plummetted and all condensate component prices dropped as much as 50 percent with a strong impact on plant economics but without massive closings.

Another issue on which we disagree with the NGL industry relates to whether butane's high price as a gasoline component is a true reflection of high intrinsic economic value, the reduction of which represents a net economic loss to society. Important in this regard is the fact that on hot summer days the difference between 9 and 11.5 RVP contributes to evaporative emissions and running losses representing roughly 1–2 percent of all gasoline consumed. However, this difference in RVP is caused by an additional 5 percent of butane being added to the gasoline. In other words, under some conditions roughly 20–40 percent of the butane added to gasoline to raise its RVP never reaches the engine and is wasted. Even under average conditions, the value of butane to vehicle owners may be less at current RVP levels than that of gasoline, even considering its octane enhancement value. Consumers have little opportunity to know the RVP of the gasoline they buy nor a perception of how much is lost to evaporation. Insofar as any significant volatility-related emissions occur, the market cannot place a proper value on this wasted butane and consumers continue to pay a high price for the butane in the gasoline they buy. In this respect, shifting butane away from its apparent "high-value" use in gasoline may not even be a shift in value, since its true value in gasoline is likely not much different than its alternative, apparent "low-value" uses.

F. Other Alternatives

EPA has considered all alternative evaporative emission control programs presented in the comments that were supported by data and technical analysis. In addition, we received a wide range of suggestions that did not specifically challenge our analysis, that did not offer specific analysis to support the suggestion, or that were aimed at regulatory goals different from EPA's; these we have not attempted to address directly. Because the RVP controls promulgated here are extremely cost effective and further controls without providing more time for equipment investment appear limited by refining technology, we are confident that we have thoroughly considered all realistic options to this Phase I program.

VIII. Interaction With State Volatility Requirements

As discussed in the preamble for the volatility NPRM, section 211(c)(4) of the Clean Air Act prohibits states from enacting controls on a fuel that are different from EPA controls, except in certain circumstances. Thus, the Phase I RVP control program finalized today will preempt any state (except California) from enforcing RVP controls different from EPA's unless such a program is approved in a State Implementation Plan (SIP) (or unless the purpose is something other than air quality improvement).

EPA's decision on whether to approve an ozone SIP amendment proposing a different RVP control program will hinge on whether the Agency makes a finding that such a program is necessary to achieve the National Ambient Air Quality Standard for ozone. EPA has proposed to approve such a SIP revision for Massachusetts, but no final decision has been made. EPA is already working with other states interested in adopting RVP controls more restrictive than those EPA is promulgating today.

IX. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0178.

Public recordkeeping burden is estimated to be approximately 1 hour a year per facility. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S.

Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

X. Impact on Small Entities

EPA's evaluation of the effects of the proposed RVP control program on small refiners, performed for the NPRM and summarized in that preamble, remains valid. Our conclusion then and now is that RVP control programs, including this Phase I program, will improve the competitive position of some small refiners (those with catalytic cracking capability), while likely causing a small reduction in revenues (relative to total revenues) for other small refiners.

In the NGL industry, many gas processors are small entities. However, as discussed above under Public Participation, we do not expect the loss in revenues to gas processors to be severe under RVP control, particularly for this moderate Phase I program.

Finally, EPA believes that the impacts on other small entities (*e.g.*, small blenders, importers, retailers, etc.) would occur primarily in the form of a slightly higher wholesale gasoline price which would then be passed along in product price increases. Since all wholesale suppliers would increase prices by about the same amount, the competitive environment for small entities purchasing that gasoline should not be affected significantly.

As a result of this analysis, performed under section 605 of the Regulatory Flexibility Act, I certify that the regulations promulgated in this notice will not have a significant impact on a substantial number of small entities.

XI. Administrative Designation and Regulatory Analysis

The Administrator has determined that this action constitutes a major regulation. Accordingly, final analyses on issues pertinent to this action have been completed. The Draft Regulatory Impact Analysis prepared under Executive Order 12291 contains much of the final analysis of air quality impact, as described above; the addressing of comments and the final analysis for the remaining issues are found in this preamble and the Final Regulatory Impact Analysis.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

Single copies of the Final RIA may be obtained by contacting: Ms. Carol Bragg, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4295.

XII. Statutory Authority

Authority for the actions promulgated in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: March 10, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Part 80 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for Part 80 is revised to read as follows:

Authority: Secs. 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.2 is amended by revising paragraph (l) and by adding new paragraphs (t), (u), and (v), to read as follows:

§ 80.2 Definitions.

* * * * *

(l) "Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

* * * * *

(t) "Carrier" means any distributor who transports or stores or causes the transportation or storage of gasoline without taking title to or otherwise having any ownership of the gasoline, and without altering either the quality or quantity of the gasoline.

(u) "Ethanol blending plant" means any refinery at which gasoline is produced solely through the addition of ethanol to gasoline, and at which the quality or quantity of gasoline is not altered in any other manner.

(v) "Ethanol blender" means any person who owns, leases, operates, controls, or supervises an ethanol blending plant.

3. New § 80.27 is added, to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) *Prohibited activities.* During regulatory control periods no refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall sell, offer for sale, dispense, supply, offer for supply, or transport gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, "applicable standard" means the standard listed in this paragraph for the geographical area and time period in which gasoline is intended to be dispensed to motor vehicles or, if such area and time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is sampled. As used in this section and § 80.28, "regulatory control periods" mean the following periods during calendar year 1989: June 30, to September 15 for retail outlets and wholesale purchaser-consumer facilities; and June 1, to September 15 for all other facilities. As used in this section and § 80.28, "regulatory control periods" mean the following periods during calendar year 1990 and each calendar year thereafter: June 1 to September 15 for retail outlets and wholesale purchaser-consumer facilities; and May 1 to September 15 for all other facilities.

APPLICABLE STANDARDS [1]

State	May	June	July	Aug.	Sept.
Alabama	10.5	10.5	9.5	9.5	10.5
Arizona	9.5	9.0	9.0	9.0	9.5
Arkansas	10.5	10.5	9.5	9.5	10.5
California: [2]					
North Coast	10.5	9.5	9.5	9.5	9.5
South Coast	9.5	9.5	9.5	9.5	9.5
Southeast	9.5	9.5	9.5	9.5	9.5

APPLICABLE STANDARDS [1]—Continued

State	May	June	July	Aug.	Sept.
Interior	9.5	9.5	9.5	9.5	9.5
Colorado	10.5	9.5	9.5	9.5	9.5
Connecticut	10.5	10.5	10.5	10.5	10.5
Delaware	10.5	10.5	10.5	10.5	10.5
District of Columbia	10.5	10.5	10.5	10.5	10.5
Florida	10.5	10.5	10.5	10.5	10.5
Georgia	10.5	10.5	9.5	9.5	10.5
Idaho	10.5	10.5	10.5	10.5	10.5
Illinois:					
North of 40° Latitude	10.5	10.5	10.5	10.5	10.5
South of 40° Latitude	10.5	10.5	9.5	9.5	10.5
Indiana	10.5	10.5	10.5	10.5	10.5
Iowa	10.5	10.5	10.5	10.5	10.5
Kansas	10.5	10.5	9.5	9.5	10.5
Kentucky	10.5	10.5	10.5	10.5	10.5
Louisiana	10.5	10.5	9.5	9.5	10.5
Maine	10.5	10.5	10.5	10.5	10.5
Maryland	10.5	10.5	10.5	10.5	10.5
Massachusetts	10.5	10.5	10.5	10.5	10.5
Michigan	10.5	10.5	10.5	10.5	10.5
Minnesota	10.5	10.5	10.5	10.5	10.5
Mississippi	10.5	10.5	9.5	9.5	10.5
Missouri	10.5	10.5	9.5	9.5	10.5
Montana	10.5	10.5	10.5	10.5	10.5
Nebraska	10.5	10.5	10.5	10.5	10.5
Nevada:					
North of 38° Latitude	10.5	9.5	9.5	9.5	9.5
South of 38° Latitude	9.5	9.5	9.5	9.5	9.5
New Hampshire	10.5	10.5	10.5	10.5	10.5
New Jersey	10.5	10.5	10.5	10.5	10.5
New Mexico:					
North of 34° Latitude	9.5	9.0	9.0	9.0	9.5
South of 34° Latitude	9.5	9.0	9.0	9.0	9.5
New York	10.5	10.5	10.5	10.5	10.5
North Carolina	10.5	10.5	9.5	9.5	10.5
North Dakota	10.5	10.5	10.5	10.5	10.5
Ohio	10.5	10.5	10.5	10.5	10.5
Oklahoma	10.5	9.5	9.5	9.5	9.5
Oregon:					
East of 122° Longitude	10.5	10.5	10.5	10.5	10.5
West of 122° Longitude	10.5	10.5	10.5	10.5	10.5
Pennsylvania	10.5	10.5	10.5	10.5	10.5
Rhode Island	10.5	10.5	10.5	10.5	10.5
South Carolina	10.5	10.5	9.5	9.5	10.5
South Dakota	10.5	10.5	10.5	10.5	10.5
Tennessee	10.5	10.5	9.5	9.5	10.5
Texas:					
East of 99° Longitude	10.5	9.5	9.5	9.5	9.5
West of 99° Longitude	9.5	9.0	9.0	9.0	9.5
Utah	10.5	9.5	9.5	9.5	9.5
Vermont	10.5	10.5	10.5	10.5	10.5
Virginia	10.5	10.5	10.5	10.5	10.5
Washington:					
East of 122° Longitude	10.5	10.5	10.5	10.5	10.5
West of 122° Longitude	10.5	10.5	10.5	10.5	10.5
West Virginia	10.5	10.5	10.5	10.5	10.5
Wisconsin	10.5	10.5	10.5	10.5	10.5
Wyoming	10.5	10.5	10.5	10.5	10.5

[1] Standards are expressed in pounds per square inch (psi).

[2] California areas include the following counties:

North Coast—Alameda, Contra Costa, Del Norte, Humbolt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, and Trinity.

Interior—Lassen, Modoc, Plumas, Sierra, Siskiyou, Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Kern (except that portion lying east of the Los Angeles County Aqueduct), Kings, Madera, Mariposa, Merced, Placer, Sacramento, San Joaquin, Shasta, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, Yuba, and Nevada.

South Coast—Orange, San Diego, San Luis Obispo, Santa Barbara, Ventura, and Los Angeles (except that portion north of the San Gabriel mountain range and east of the Los Angeles County Aqueduct).

Southeast—Imperial, Riverside, San Bernardino, Los Angeles (that portion north of the San Gabriel mountain range and east of the Los Angeles County Aqueduct), Mono, Inyo, and Kern (that portion lying east of the Los Angeles County Aqueduct).

(b) *Determination of compliance.* Compliance with the standards listed in paragraph (a) of this section shall be determined by use of one of the sampling methodologies specified in Appendix D to this part and one of the testing methodologies specified in Appendix E to this part.

(c) *Liability.* Liability for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.28.

(d) *Special provisions for alcohol blends.* (1) Any gasoline which meets the requirements of paragraph (d)(2) of this section and which is marketed in accordance with the requirements of paragraph (d)(3) of this section shall not be in violation of this section if its Reid

vapor pressure does not exceed the applicable standard in paragraph (a) of this section by more than one pound per square inch.

(2) In order to qualify for the special regulatory treatment specified in paragraph (d)(1) of this section, gasoline must contain at least 9% ethanol (by volume). The ethanol content of gasoline shall be determined by use of one of the testing methodologies specified in Appendix F to this part. The maximum ethanol content of gasoline shall not exceed any applicable waiver conditions under section 211(f)(4) of the Clean Air Act.

(3) In order to qualify for the special regulatory treatment specified in paragraph (d)(1) of this section, gasoline must be marketed in accordance with each of the following requirements:

(i) Each gasoline pump stand from which such gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility shall be affixed with a legible and conspicuous label which states that the gasoline dispensed from the pump contains ethanol and the percentage concentration of ethanol.

(ii) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies the shipment of such gasoline shall contain a legible and conspicuous statement that the gasoline being shipped contains ethanol. Such documents shall be retained by distributors, resellers, carriers, retailers, and wholesale purchaser-consumers for at least one year, and shall be available for inspection by the Administrator or his authorized representative during such period.

(Approved by the Office of Management and Budget under control number 2060-0178)

4. New § 80.28 is added, to read as follows:

§ 80.28 Liability for violations of gasoline volatility controls and prohibitions.

(a) *Violations at refineries or importer facilities.* Where a violation of the applicable standard set forth in § 80.27 is detected at a refinery that is not an ethanol blending plant or at an importer's facility, the refiner or importer shall be deemed in violation.

(b) *Violations at carrier facilities.* Where a violation of the applicable standard set forth in § 80.27 is detected at a carrier's facility, whether in a transport vehicle, in a storage facility, or elsewhere at the facility, the following parties shall be deemed in violation:

(1) The carrier, except as provided in paragraph (g)(1) of this section; and

(2) The refiner (if he is not an ethanol blender) at whose refinery the gasoline was produced or the importer at whose import facility the gasoline was imported, except as provided in paragraph (g)(2) of this section; and

(3) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) of this section.

(c) *Violations at branded distributor facilities, reseller facilities, or ethanol blending plants.* Where a violation of the applicable standard set forth in § 80.27 is detected at a distributor facility, a reseller facility, or an ethanol blending plant which is operating under the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor or reseller, except as provided in paragraph (g)(3) of this section;

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard;

(3) The refiner under whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) the distributor, reseller, or ethanol blender is operating, except as provided in paragraph (g)(4) of this section; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) of this section.

(d) *Violations at unbranded distributor facilities or ethanol blending plants.* Where a violation of the applicable standard set forth in § 80.27 is detected at a distributor facility or an ethanol blending plant not operating under a refiner's corporate, trade, or brand name, or that of any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor, except as provided in paragraph (g)(3) of this section;

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard;

(3) The refiner (if he is not an ethanol blender) at whose refinery the gasoline was produced or the importer at whose import facility the gasoline was imported, except as provided in paragraph (g)(2) of this section; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) of this section.

(e) *Violations at branded retail outlets or wholesale purchaser-consumer facilities.* Where a violation of the applicable standard set forth in § 80.27 is detected at a retail outlet or at a wholesale purchaser-consumer facility displaying the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) of this section;

(2) The distributor and/or reseller (if any), except as provided in paragraph (g)(3) of this section;

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard;

(4) The refiner whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) is displayed at the retail outlet or wholesale purchaser-consumer facility, except as provided in paragraph (g)(4) of this section; and

(5) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) of this section.

(f) *Violations at unbranded retail outlets or wholesale purchaser-consumer facilities.* Where a violation of the applicable standard set forth in § 80.27 is detected at a retail outlet or at a wholesale purchaser-consumer facility not displaying the corporate, trade, or brand name of a refinery or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) of this section;

(2) The distributor (if any), except as provided in paragraph (g)(3) of this section;

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) of this section.

(g) *Defenses.* (1) In any case in which a carrier would be in violation under paragraph (b)(1) of this section, the carrier shall not be deemed in violation if he can demonstrate:

(i) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or the carrier, reseller, or distributor from whom the gasoline was received, which represented to the carrier that the gasoline was in compliance with the applicable standard when delivered to the carrier; and

(ii) Evidence of an oversight program conducted by the carrier, such as periodic sampling and testing of incoming gasoline, for monitoring the

volatility of gasoline stored or transported by that carrier; and

(iii) That the violation was not caused by the carrier or his employee or agent.

(2) In any case in which a refiner or importer would be in violation under paragraph (b)(2) or (d)(3) of this section, the refiner or importer shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendices D and E to this part, which evidence that the gasoline determined to be in violation was in compliance with the applicable standard when it was delivered to the next party in the distribution system.

(3) In any case in which a distributor or reseller would be in violation under paragraphs (c)(1), (d)(1), (e)(2), or (f)(2) of this section, the distributor or reseller shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or the carrier, reseller or distributor from whom the gasoline was received, which represented to the distributor or reseller that the gasoline was in compliance with the applicable standard when delivered to the distributor or reseller; and

(iii) Evidence of an oversight program conducted by the distributor or reseller, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the distributor or reseller sells, supplies, offers for sale or supply, or transports.

(4) In any case in which a refiner would be in violation under paragraphs (c)(3) or (e)(4) of this section, the refiner shall not be deemed in violation if he can demonstrate all of the following:

(i) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendices D and E to this part at the refinery at which the gasoline was produced, which evidence that the gasoline determined to be in violation was in compliance with the applicable standard when transported from the refinery; and

(ii) That the violation was not caused by him or his employee or agent; and

(iii) That the violation:

(A) Was caused by an act in violation of law (other than the Act or this part), or an act of sabotage or vandalism, whether or not such acts are violations of law in the jurisdiction where the violation of the requirements of this part occurred, or

(B) Was caused by the action of a reseller, an ethanol blender, or a retailer supplied by such reseller or ethanol blender, in violation of a contractual undertaking imposed by the refiner on such reseller or ethanol blender designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(C) Was caused by the action of a retailer who is supplied directly by the refiner (and not by a reseller), in violation of a contractual undertaking imposed by the refiner on such retailer designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(D) Was caused by the action of a distributor or an ethanol blender subject to a contract with the refiner for transportation of gasoline from a terminal to a distributor, ethanol blender, retailer or wholesale purchaser-consumer, in violation of a contractual undertaking imposed by the refiner on such distributor or ethanol blender designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(E) Was caused by a carrier or other distributor not subject to a contract with the refiner but engaged by him for transportation of gasoline from a terminal to a distributor, ethanol blender, retailer or wholesale purchaser-consumer, despite reasonable efforts by the refiner (such as specification or inspection of equipment) to prevent such action, or

(F) Occurred at a wholesale purchaser-consumer facility: *Provided, however,* That if such wholesale purchaser-consumer was supplied by a reseller or ethanol blender, the refiner must demonstrate that the violation could not have been prevented by such reseller's compliance with a contractual undertaking imposed by the refiner on such reseller or ethanol blender as provided in paragraph (g)(4)(iii)(B) of this section.

(iv) In paragraphs (g)(4)(iii)(A) through (E) of this section, the term "was caused" means that the refiner must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(5) In any case in which a retailer or wholesale purchaser-consumer would be in violation under paragraphs (e)(1) or (f)(1) of this section, the retailer or wholesale purchaser-consumer shall not be deemed in violation if he can demonstrate that the violation was not caused by him or his employee or agent.

(6) In any case in which an ethanol blender would be in violation under paragraphs (b)(3), (c)(4), (d)(4), (e)(5) or (f)(4) of this section, the ethanol blender shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or the carrier, reseller, or distributor from whom the gasoline was received, which represented to the ethanol blender that the gasoline to which ethanol was added was in compliance with the applicable standard when delivered to the ethanol blender; and

(iii) Evidence of an oversight program conducted by the ethanol blender, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the ethanol blender sells, supplies, offers for sale or supply, or transports; and

(iv) That the gasoline determined to be in violation contained no more than 10% ethanol (by volume) when it was delivered to the next party in the distribution system.

(7) In paragraphs (g)(1)(iii), (g)(2)(i), (g)(3)(i), (g)(4)(ii), (g)(5), and (g)(6)(i) of this section the respective party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that it or its employee or agent did not cause the violation.

5. New Appendices D, E and F are added to read as follows:

Appendix D—Sampling Procedures for Fuel Volatility

1. Scope.

1.1 This method covers procedures for obtaining representative samples of gasoline for the purpose of testing for compliance with the Reid vapor pressure (RVP) standards set forth in § 80.27.

2. Summary of method.

2.1 It is necessary that the samples be truly representative of the gasoline in question. The precautions required to ensure the representative character of the samples are numerous and depend upon the tank, carrier, container or line from which the sample is being obtained, the type and cleanliness of the sample container, and the

sampling procedure that is to be used. A summary of the sampling procedures and their application is presented in Table 1. Each procedure is suitable for sampling a material under definite storage, transportation, or container conditions. The basic principle of each procedure is to obtain a sample in such manner and from such locations in the tank or other container that the sample will be truly representative of the gasoline.

3. Description of terms.

3.1 "Average sample" is one that consists of proportionate parts from all sections of the container.

3.2 "All-levels sample" is one obtained by submerging a stoppered beaker or bottle to a point as near as possible to the draw-off level, then opening the sampler and raising it at a rate such that it is 70–85% full as it emerges from the liquid. An all-levels sample is not necessarily an average sample because the tank volume may not be proportional to the depth and because the operator may not be able to raise the sampler at the variable rate required for proportionate filling. The rate of filling is proportional to the square root of the depth of immersion.

3.3 "Running sample" is one obtained by lowering an unstoppered beaker or bottle from the top of the gasoline to the level of the bottom of the outlet connection or swing line, and returning it to the top of the gasoline at a uniform rate of speed such that the beaker or bottle is 70–85% full when withdrawn from the gasoline.

3.4 "Spot sample" is one obtained at some specific location in the tank by means of a thief bottle, or beaker.

3.5 "Top sample" is a spot sample obtained 6 inches (150 mm) below the top surface of the liquid (Figure 1).

3.6 "Upper sample" is a spot sample taken at the mid-point of the upper third of the tank contents (Figure 1).

3.7 "Middle sample" is a spot sample obtained from the middle of the tank contents (Figure 1).

3.8 "Lower sample" is a spot sample obtained at the level of the fixed tank outlet or the swing line outlet (Figure 1).

3.9 "Clearance sample" is a spot sample taken 4 inches (100 mm) below the level of the tank outlet (Figure 1).

3.10 "Bottom sample" is one obtained from the material on the bottom surface of the tank, container, or line at its lowest point.

3.11 "Drain sample" is one obtained from the draw-off or discharge valve. Occasionally, a drain sample may be the same as a bottom sample, as in the case of a tank car.

3.12 "Continuous sample" is one obtained from a pipeline in such manner as to give a representative average of a moving stream.

3.13 "Mixed sample" is one obtained after mixing or vigorously stirring the contents of the original container, and then pouring out or drawing off the quantity desired.

3.14 "Nozzle sample" is one obtained from a gasoline pump nozzle which dispenses gasoline from a storage tank at a retail outlet or a wholesale purchaser-consumer facility.

4. Sample containers.

4.1 Sample containers may be clear or brown glass bottles, or cans. The clear glass bottle is advantageous because it may be examined visually for cleanliness, and also allows visual inspection of the sample for free water or solid impurities. The brown glass bottle affords some protection from light. The only cans permissible are those with the seams soldered on the exterior surface with a flux of rosin in a suitable solvent. Such a flux is easily removed with gasoline, whereas many others are very difficult to remove.

4.2 Container closure. Cork or glass stoppers, or screw caps of plastic or metal, may be used for glass bottles; screw caps only shall be used for cans to provide a vapor-tight closure seal. Corks must be of good quality, clean and free from holes and loose bits of cork. Never use rubber stoppers. Contact of the sample with the cork may be prevented by wrapping tin or aluminum foil around the cork before forcing it into the bottle. Glass stoppers must be a perfect fit. Screw caps must be protected by a cork disk faced with tin or aluminum foil, or other material that will not affect petroleum or petroleum products.

4.3 Cleaning procedure. All sample containers must be absolutely clean and free of water, dirt, lint, washing compounds, naphtha, or other solvents, soldering fluxes or acids, corrosion, rust, and oil. Before using a container, rinse it with Stoddard solvent or other naphtha of similar volatility. (It may be necessary to use sludge solvents to remove all traces of sediment and sludge from containers previously used.) Then wash the container with strong soap solution, rinse it thoroughly with tap water, and finally with distilled water. Dry either by passing a current of clean, warm air through the container or by placing it in a hot dust-free cabinet at 104 degrees Fahrenheit (40 degrees centigrade) or higher. When dry, stopper or cap the container immediately.

5. Sampling apparatus.

5.1 Sampling apparatus is described in detail under each of the specific sampling procedures. Clean, dry, and free all sampling apparatus from any substance that might contaminate the material, using the procedure described in 4.3.

6. Time and place of sampling.

6.1 When loading or discharging gasoline, take samples from both shipping and receiving tanks, and from the pipeline if required.

6.2 *Ship or barge tanks.* Sample each product after the vessel is loaded or just before unloading.

6.3 *Tank cars.* Sample the product after the car is loaded or just before unloading.

Note: When taking samples from tanks suspected of containing flammable atmospheres, precautions should be taken to guard against ignitions due to static electricity. Metal or conductive objects, such as gage tapes, sample containers, and thermometers, should not be lowered into or suspended in a compartment or tank which is being filled or immediately after cessation of pumping. A waiting period of approximately one minute will generally permit a substantial relaxation of the electrostatic charge; under certain conditions a longer period may be deemed advisable.

7. Obtaining samples.

7.1 Directions for sampling cannot be made explicit enough to cover all cases. Extreme care and good judgment are necessary to ensure samples that represent the general character and average condition of the material. Clean hands are important. Clean gloves may be worn but only when absolutely necessary, such as in cold weather, or when handling materials at high temperature, or for reasons of safety. Select wiping cloths so that lint is not introduced, contaminating samples.

7.2 As many petroleum vapors are toxic and flammable, avoid breathing them or igniting them from an open flame or a spark produced by static. Follow all safety precautions specific to the material being sampled.

7.3 When sampling relatively volatile products (more than 2 pounds (0.14 kgf/cm^2) RVP), the sampling apparatus shall be filled and allowed to drain before drawing the sample. If the sample is to be transferred to another container, this container shall also be rinsed with some of the volatile product and then drained. When the actual sample is emptied into this container, the sampling apparatus should be upended into the opening of the sample container and remain in this position until the contents have been transferred so that no unsaturated air will be entrained in the transfer of the sample.

8. Handling samples.

8.1 *Volatile samples.* It is necessary to protect all volatile samples of gasoline from evaporation. Transfer the product from the sampling apparatus to the sample container immediately. Keep the container closed except when the material is being transferred. After delivery to the laboratory, volatile samples should be cooled before the container is opened.

8.2 *Container outage.* Never completely fill a sample container, but allow adequate room for expansion, taking into consideration the temperature of the liquid at the time of filling and the probable maximum temperature to which the filled container may be subjected.

9. Shipping samples.

9.1 To prevent loss of liquid and vapors during shipment, and to protect against moisture and dust, cover the stoppers of glass bottles with plastic caps that have been swelled in water, wiped dry, placed over the tops of the stoppered bottles, and allowed to shrink tightly in place. The caps of metal containers must be screwed down tightly and checked for leakage. Postal and express office regulations applying to the shipment of flammable liquids must be observed.

10. Labeling sample containers.

10.1 Label the container immediately after a sample is obtained. Use waterproof and oilproof ink or a pencil hard enough to dent the tag, since soft pencil and ordinary ink markings are subject to obliteration from moisture, oil smearing and handling. Include the following information:

10.1.1 Date and time (the period elapsed during continuous sampling);

10.1.2 Name of the sample;

10.1.3 Name or number and owner of the vessel, car, or container;

10.1.4—Brand and grade of material; and

10.1.5—Reference symbol or identification number.

11. Sampling procedures.

11.1 The standard sampling procedures described in this method are summarized in Table 1. Alternative sampling procedures may be used if a mutually satisfactory agreement has been reached by the party(ies) involved and EPA and such agreement has been put in writing and signed by authorized officials.

11.2 Bottle or beaker sampling. The bottle or beaker sampling procedure is applicable for sampling liquids of 16 pounds (1.12 kgf/cm²) RVP or less in tank cars, tank trucks, shore tanks, ship tanks, and barge tanks.

11.2.1 *Apparatus.* A suitable sampling bottle or beaker as shown in Figure 2 is required. Recommended diameter of opening in the bottle or beaker is ¾ inch (19 mm).

11.2.2 *Procedure.*

11.2.2.1 *All-levels sample.* Lower the weighted, stoppered bottle or beaker as near as possible to the draw-off level, pull out the stopper with a sharp jerk of the cord or chain and raise the bottle at a uniform rate so that it is 70–85% full as it emerges from the liquid.

11.2.2.2 *Running sample.* Lower the unstoppered bottle or beaker as near as possible to the level of the bottom of the outlet connection or swing line and then raise the bottle or beaker to the top of the gasoline at a uniform rate of speed such that it is 70–85% full when withdrawn from the gasoline.

11.2.2.3 *Upper, middle, and lower samples.* Lower the weighted, stoppered bottle to the proper depths (Figure 1) as follows:

Upper sample.....	middle of upper third of the tank contents
Middle sample.....	middle of the tank contents
Lower sample	level of the fixed tank outlet or the swing-line outlet

At the selected level pull out the stopper with a sharp jerk of the cord or chain and allow the bottle or beaker to fill completely, as evidenced by the cessation of air bubbles. When full, raise the bottle or beaker, pour off a small amount, and stopper immediately.

11.2.2.4 *Top sample.* Obtain this sample (Figure 1) in the same manner as specified in 11.2.2.3 but at six inches (150 mm) below the top surface of the tank contents.

11.2.2.5 *Handling.* Stopper and label bottle samples immediately after taking them, and deliver to the laboratory in the original sampling bottles.

11.3 *Tap sampling.* The tap sampling procedure is applicable for sampling liquids of twenty-six pounds (1.83 kgf/cm²) RVP or less in tanks which are equipped with suitable sampling taps or lines. This procedure is recommended for volatile stocks in tanks of the breather and balloon roof type, spheroids, etc. (Samples may be taken from the drain cocks of gage glasses, if the tank is not equipped with sampling taps.) The assembly for tap sampling is shown in Figure 3.

11.3.1 *Apparatus.*

11.3.1.1 *Tank taps.* The tank should be equipped with at least three sampling taps placed equidistant throughout the tank height and extending at least three feet (0.9 meter) inside the tank shell. A standard ¼ inch pipe with suitable valve is satisfactory.

11.3.1.2 *Tube.* A delivery tube that will not contaminate the product being sampled and long enough to reach to the bottom of the sample container is required to allow submerged filling.

11.3.1.3 *Sample containers.* Use clean, dry glass bottles of convenient size and strength or metal containers to receive the samples.

11.3.2 *Procedure.* Before a sample is drawn, flush the tap (or gage glass drain cock) and line until they are purged completely. Connect the clean delivery tube to the tap. Draw upper, middle, or lower samples directly from the respective taps after the flushing operation. Stopper and label the sample container immediately after filling, and deliver it to the laboratory.

11.4 *Continuous sampling.* The continuous sampling procedure is applicable for sampling liquids of 16 pounds (1.12 kgf/cm²) RVP or less and semiliquids in pipelines, filling lines, and transfer lines. The continuous sampling may be done manually or by using automatic devices.

11.4.1 *Apparatus.*

11.4.1.1 *Sampling probe.* The function of the sampling probe is to withdraw from the flow stream a portion that will be representative of the entire stream. The apparatus assembly for continuous sampling is shown in Figure 4. Probe designs that are commonly used are as follows:

11.4.1.1.1 A tube extending to the center of the line and beveled at a 45 degree angle facing upstream (Figure 4(a)).

11.4.1.1.2 A long-radius forged elbow or pipe bend extending to the center line of the pipe and facing upstream. The end of the probe should be reamed to give a sharp entrance edge (Figure 4(b)).

11.4.1.1.3 A closed-end tube with a round orifice spaced near the closed end which should be positioned in such a way that the orifice is in the center of the pipeline and is facing the stream as shown in Figure 4(c)).

11.4.1.2 *Probe location.* Since the fluid to be sampled may not in all cases be homogeneous, the location, the position and the size of the sampling probe should be such as to minimize stratification or dropping out of heavier particles within the tube or the displacement of the product within the tube as a result of variation in gravity of the flowing stream. The sampling probe should be located preferably in a vertical run of pipe and as near as practicable to the point where the product passes to the receiver. The probe should always be in a horizontal position.

11.4.1.2.1 The sampling lines should be as short as practicable and should be cleared before any samples are taken.

11.4.1.2.2 Where adequate flowing velocity is not available, a suitable device for mixing the fluid flow to ensure a homogeneous mixture at all rates of flow and to eliminate stratification should be installed upstream of the sampling tap. Some effective devices for obtaining a homogeneous mixture are as follows: Reduction in pipe size; a series of baffles; orifice or perforated plate; and a combination of any of these methods.

11.4.1.2.3 The design or sizing of these devices is optional with the user, as long as the flow past the sampling point is homogeneous and stratification is eliminated.

11.4.1.3 To control the rate at which the sample is withdrawn, the probe or probes should be fitted with valves or plug cocks.

11.4.1.4 Automatic sampling devices that meet the standards set out in 11.4.1.5 may be used in obtaining samples of gasoline. The quality of sample collected must be of sufficient size for analysis, and its composition should be identical with the composition of the batch flowing in the line while the sample is being taken. An automatic sampler installation necessarily includes not only the automatic sampling device that extracts the samples from the line, but also a suitable probe, connecting lines, auxiliary equipment, and a container in which the sample is collected. Automatic samplers may be classified as follows:

11.4.1.4.1 Continuous sampler, time cycle (nonproportional) type. A sampler designed and operated in such a manner that it transfers equal increments of liquid from the pipeline to the sample container at a uniform rate of one or more increments per minute is a continuous sampler.

11.4.1.4.2 Continuous sampler, flow-responsive (proportional) type. A sampler that is designed and operated in such a manner that it will automatically adjust the quantity of sample in proportion to the rate of flow is a flow-responsive (proportional) sampler. Adjustment of the quantity of sample may be made either by varying the frequency of transferring equal increments of sample to the sample container, or by varying the volume of the increments while maintaining a constant frequency of transferring the increments to the sample container. The apparatus assembly for continuous sampling is shown in Figure 4.

11.4.1.4.3 *Intermittent sampler.* A sampler that is designed and operated in such a manner that it transfers equal increments of liquid from a pipeline to the sample container at a uniform rate of less than one increment per minute is an intermittent sampler.

11.4.1.5 *Standards of installation.* Automatic sampler installations should meet all safety requirements in the plant or area where used, and should comply with American National Standard Code for Pressure Piping, and other applicable codes (ANSI B31.1). The sampler should be so installed as to provide ample access space for inspection and maintenance.

11.4.1.5.1 Small lines connecting various elements of the installation should be so arranged that complete purging of the automatic sampler and of all lines can be accomplished effectively. All fluid remaining in the sampler and the lines from the preceding sampling cycle should be purged immediately before the start of any given sampling operation.

11.4.1.5.2 In those cases where the sampler design is such that complete purging

of the sampling lines and the sampler is not possible, a small pump should be installed in order to circulate a continuous stream from the sampling tube past or through the sampler and back into the line. The automatic sampler should then withdraw the sample from the sidestream through the shortest possible connection.

11.4.1.5.3 Under certain conditions, there may be a tendency for water and heavy particles to drop out in the discharge line from the sampling device and appear in the sample container during some subsequent sampling period. To circumvent this possibility, the discharge pipe from the sampling device should be free of pockets or enlarged pipe areas, and preferably should be pitched downward to the sample container.

11.4.1.5.4 To ensure clean, free-flowing lines, piping should be designed for periodic cleaning.

11.4.1.6 *Field calibration.* Composite samples obtained from the automatic sampler installation should be verified for quantity performance in a manner that meets with the approval of all parties concerned (including EPA), at least once a month and more often if conditions warrant. In the case of time-cycle samplers, deviations in quantity of the sample taken should not exceed ± five percent for any given setting. In the case of flow-responsive samplers, the deviation in quantity of sample taken per 1,000 barrels of flowing stream should not exceed ± five percent. For the purpose of field-calibrating an installation, the composite sample obtained from the automatic sampler under test should be verified for quality by comparing on the basis of physical and chemical properties, with either a properly secured continuous nonautomatic sample or tank sample. The tank sample should be taken under the following conditions:

11.4.1.6.1 The batch pumped during the test interval should be diverted into a clean tank and a sample taken within one hour after cessation of pumping.

11.4.1.6.2 If the sampling of the delivery tank is to be delayed beyond one hour, then the tank selected must be equipped with an adequate mixing means. For valid comparison, the sampling of the delivery tank must be completed within eight hours after cessation of pumping, even though the tank is equipped with a motor-driven mixer.

11.4.1.6.3 When making a normal full-tank delivery from a tank, a properly secured sample may be used to check the results of the sampler if the parties (including EPA) mutually agree to this procedure.

11.4.1.7 *Receiver.* The receiver must be a clean, dry container of convenient size to receive the sample. All connections from the sample probe to the sample container must be free of leaks. Two types of containers may be used, depending upon service requirements.

11.4.1.7.1 *Atmospheric container.* The atmospheric container shall be constructed in such a way that it retards evaporation loss and protects the sample from extraneous material such as rain, snow, dust, and trash. The construction should allow cleaning, interior inspection, and complete mixing of the sample prior to removal. The container should be provided with a suitable vent.

11.4.1.7.2 *Closed container.* The closed container shall be constructed in such a manner that it prevents evaporation loss. The construction must allow cleaning, interior inspection and complete mixing of the sample prior to removal. The container should be equipped with a pressure-relief valve.

11.4.2 *Procedure.*

11.4.2.1 *Nonautomatic sample.* Adjust the valve or plug cock from the sampling probe so that a steady stream is drawn from the probe. Whenever possible, the rate of sample withdrawal should be such that the velocity of liquid flowing through the probe is approximately equal to the average linear velocity of the stream flowing through the pipeline. Measure and record the rate of sample withdrawal as gallons per hour. Divert the sample stream to the sampling container continuously or intermittently to provide a quantity of sample that will be of sufficient size for analysis.

11.4.2.2 *Automatic sampling.* Purge the sampler and the sampling lines immediately before the start of a sampling operation. If the sample design is such that complete purging is not possible, circulate a continuous stream from the probe past or through the sampler and back into the line. Withdraw the sample from the side stream through the automatic sampler using the shortest possible connections. Adjust the sampler to deliver not less than one and not more than 40 gallons (151 liters) of sample during the desired sampling period. For time-cycle samplers, record the rate at which sample increments were taken per minute. For flow-responsive samplers, record the proportion of sample to total stream. Label the samples and deliver them to the laboratory in the containers in which they were collected.

11.5 *Nozzle sampling.* The nozzle sampling procedure is applicable for sampling gasoline from a retail outlet or wholesale purchaser-consumer facility storage tank.

11.5.1 *Apparatus.* Sample containers conforming with 4.1 should be used. A spacer, if appropriate, and a nozzle extension as shown in Figures 6 and 7 shall be used when nozzle sampling.

11.5.2 *Procedure.* Immediately after gasoline has been delivered from the pump and the pump has been reset, deliver a small amount of product into the sample container, using a spacer (Figure 6), if needed, on the pump nozzle (vapor recovery type). Rinse sample container and dump product into waste container. Insert nozzle extension (Figure 7) into sample container and insert pump nozzle into extension with slot over air bleed hole. Fill sample container slowly through nozzle extension to 70–80 percent full (Figure 8). Remove nozzle extension. Cap sample container at once. Check for leaks. Discard sample container and resample if leak occurs. If sample container is leak tight, label the container and deliver it to the laboratory.

12. Special Precautions and Instructions.

12.1 *Precautions.* Vapor pressures are extremely sensitive to evaporation losses and to slight changes in composition. When obtaining, storing, or handling samples, observe the necessary precautions to ensure samples representative of the product and satisfactory for RVP tests. Official samples should be taken by, or under the immediate supervision of, a person of judgment, skill, and sampling experience. Never prepare composite samples for this test. Make certain that containers which are to be shipped by common carrier conform to applicable Interstate Commerce Commission, state, and local regulations. When flushing or purging lines or containers, observe the pertinent regulations and precautions against fire, explosion, and other hazards.

12.2 *Sample containers.* Use containers of not less than one quart (0.9 liter) nor more than two gallons (7.6 liters) capacity, of sufficient strength to withstand the pressures to which they may be subjected, and of a type that will permit replacement of the cap or stopper with suitable connections for transferring the sample to the gasoline chamber of the vapor pressure apparatus. Open-type containers have a single opening which permits sampling by immersion. Closed-type containers have two openings, one in each end (or the equivalent thereof), fitted with valves suitable for sampling by water displacement or by purging.

12.3 *Transfer connections.* The transfer connection for the open-type container consists of an air tube and a liquid delivery tube assembled in a cap or stopper. The air tube extends to the bottom of the container. One end of the liquid delivery tube is flush with the inside face of the cap or stopper and the tube is long enough to reach the bottom of the gasoline chamber while the sample is being transferred to the chamber. The transfer connection for the closed-type container consists of a single tube with a connection suitable for attaching it to one of the openings of the sample container. The tube is long enough to reach the bottom of the gasoline chamber while the sample is being transferred.

12.4 *Sampling open tanks.* Use clean containers of the open type when sampling open tanks and tank cars. An all-level sample obtained by the bottle procedure described in 11.2 is recommended. Before taking the sample, flush the container by immersing it in the product to be sampled. Then obtain the sample immediately. Pour off enough so that the container will be 70–80 percent full and close it promptly. Label the container and deliver it to the laboratory.

12.5 *Sampling closed tanks.* Containers of the closed type may be used to obtain samples from closed or pressure tanks. Obtain the sample using the water displacement procedure described in 12.6 or the purging procedure described in 12.7. The water displacement procedure is preferable because the flow of product involved in the purging procedure may be hazardous.

12.6 *Water displacement procedure.* Completely fill the closed-type container with water and close the valves. The water should be at the same temperature or lower than that of the product to be sampled. While permitting a small amount of product to flow through the fittings, connect the top or inlet valve of the container to the tank sampling tap or valve. Then open all valves on the inlet side of the container. Open the bottom or

outlet valve slightly to allow the water to be displaced slowly by the sample entering the container. Regulate the flow so that there is no appreciable change in pressure within the container. Close the outlet valve as soon as gasoline discharges from the outlet; then in succession close the inlet valve and the sampling valve on the tank. Disconnect the container and withdraw enough of the contents so that it will be 70–80 percent full. If the vapor pressure of the product is not high enough to force liquid from the container, open both the upper and lower valves slightly to remove the excess. Promptly seal and label the container, and deliver it to the laboratory.

12.7 Purging procedure. Connect the inlet valve of the closed-type container to the tank sampling tap or valve. Throttle the outlet valve of the container so that the pressure in it will be approximately equal to that in the container being sampled. Allow a volume of product equal to at least twice that of the container to flow through the sampling system. Then close all valves, the outlet valve first, the inlet valve of the container second, and the tank sampling valve last, and disconnect the container immediately. Withdraw enough of the contents so that the sample container will be 70–80 percent full. If the vapor pressure of the product is not high enough to force liquid from the container, open both the upper and lower valves slightly to remove the excess. Promptly seal and label the container, and deliver it to the laboratory.

TABLE 1.—SUMMARY OF GASOLINE SAMPLING PROCEDURES AND APPLICABILITY

Type of container	Procedure	Paragraph
Storage tanks, ship and barge tanks, tank cars, tank trucks.	Bottle sampling.	11.2
Storage tanks with taps.	Tap sampling.	11.3
Pipes and lines	Continuous line sampling.	11.4
Retail outlet and whole-sale purchaser-consumer facility storage tanks.	Nozzle sampling.	11.5

BILLING CODE 6560-50-M

-43a-

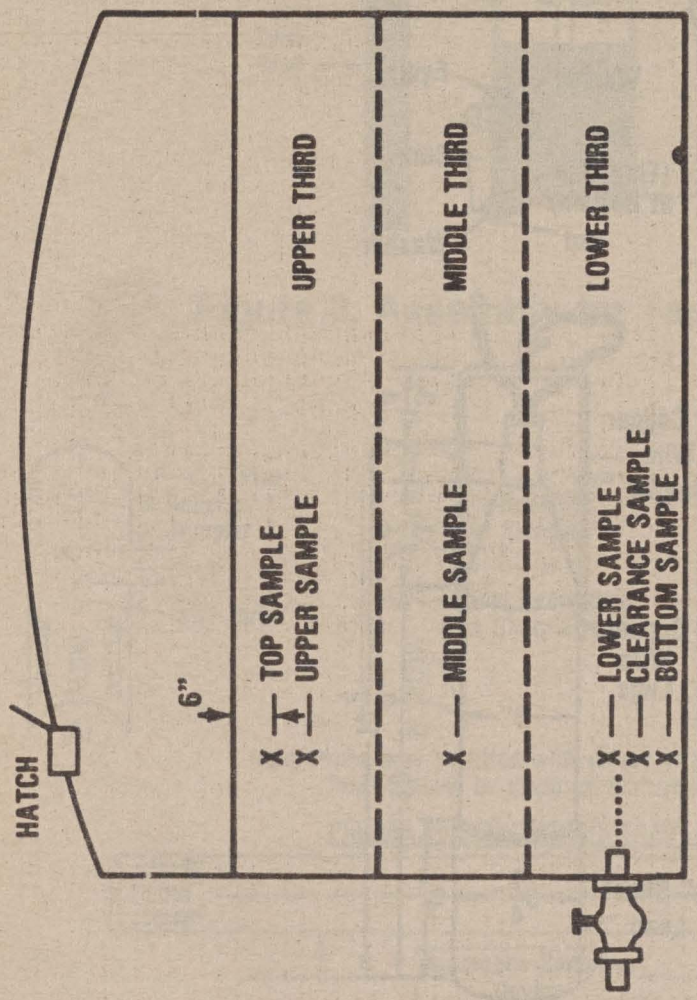
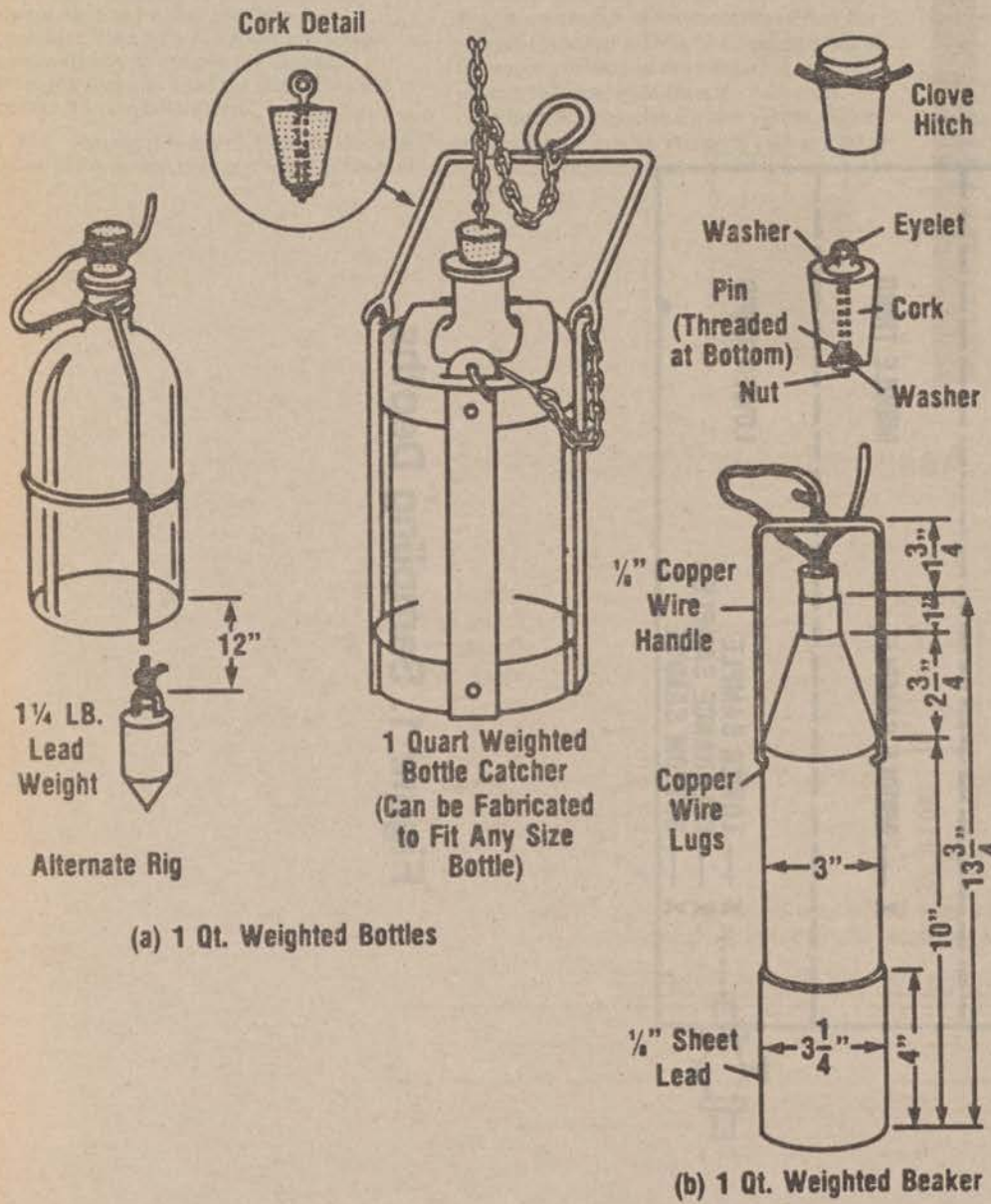


Figure 1. Sampling Depths

-43b-



(a) 1 Qt. Weighted Bottles

(b) 1 Qt. Weighted Beaker

METRIC EQUIVALENTS

in.	⅛	1	1¾	2¾	3¼	4	10	12	13¾
mm	3	25	45	70	83	102	250	300	350

Figure 2. Assembly for Bottle Sampling

-43c-

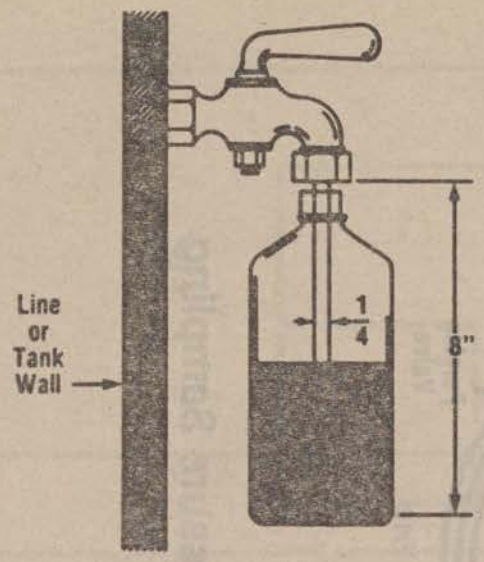


Figure 3. Assembly for Tap Sampling

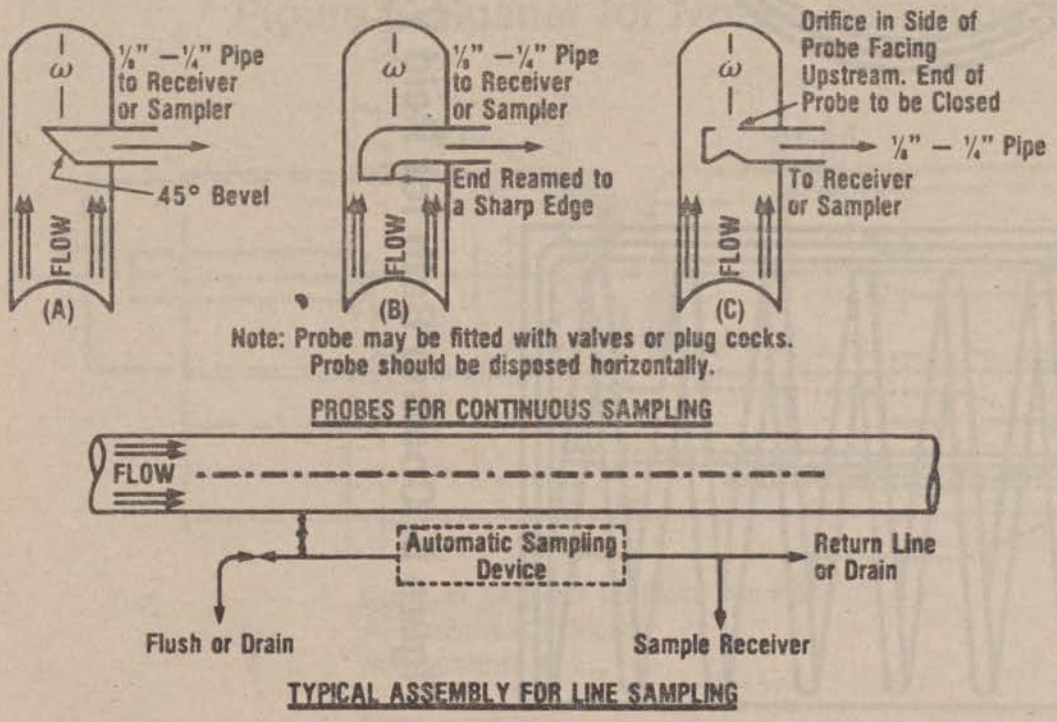


Figure 4. Probes for Continuous Sampling

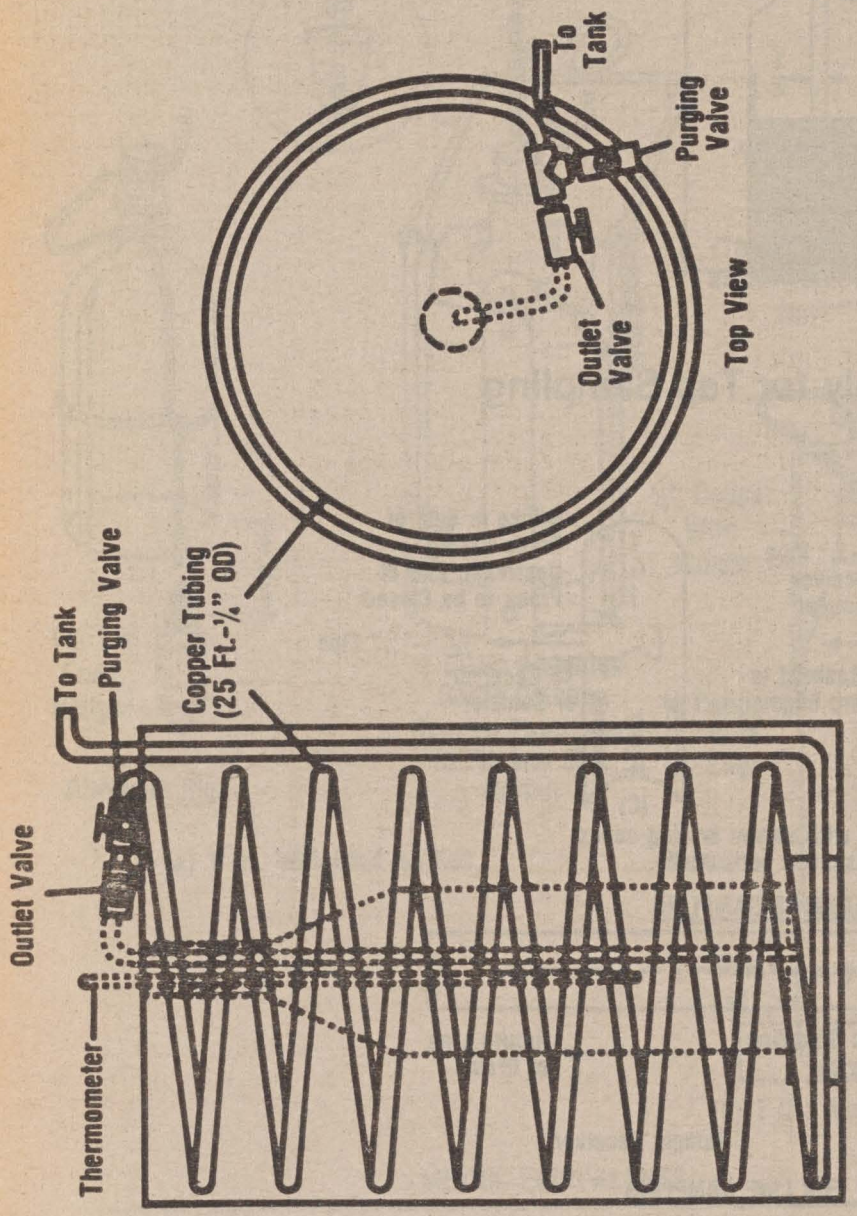
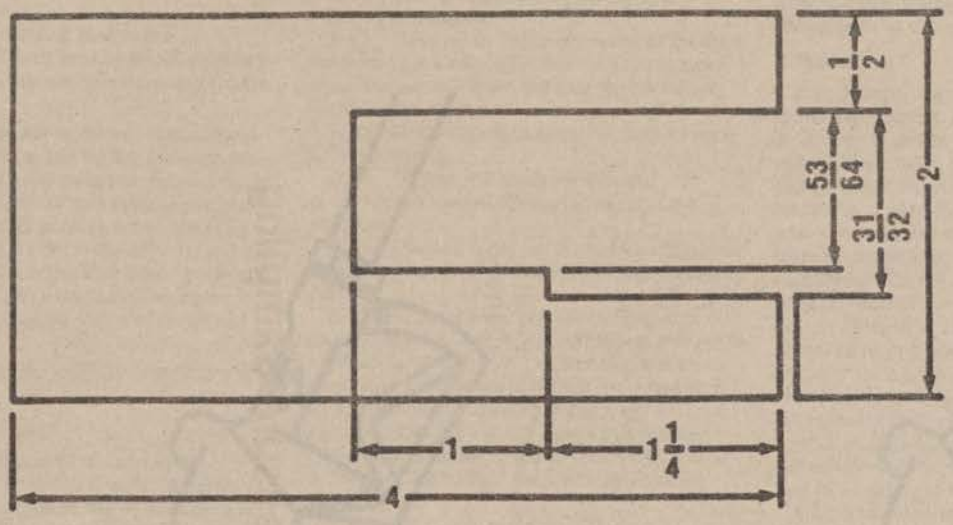


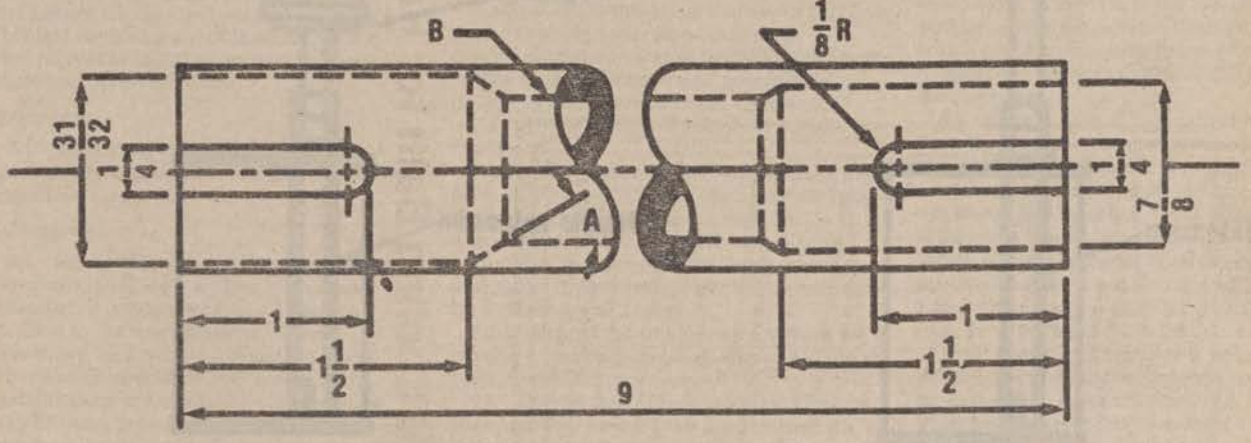
Figure 5. Cooling Bath for Reid Vapor Pressure Sampling

-43e-



Make from ¼ inch flat steel
All dimensions in inches
Break all edges and corners

Figure 6. Spacer for Nozzle Sampling

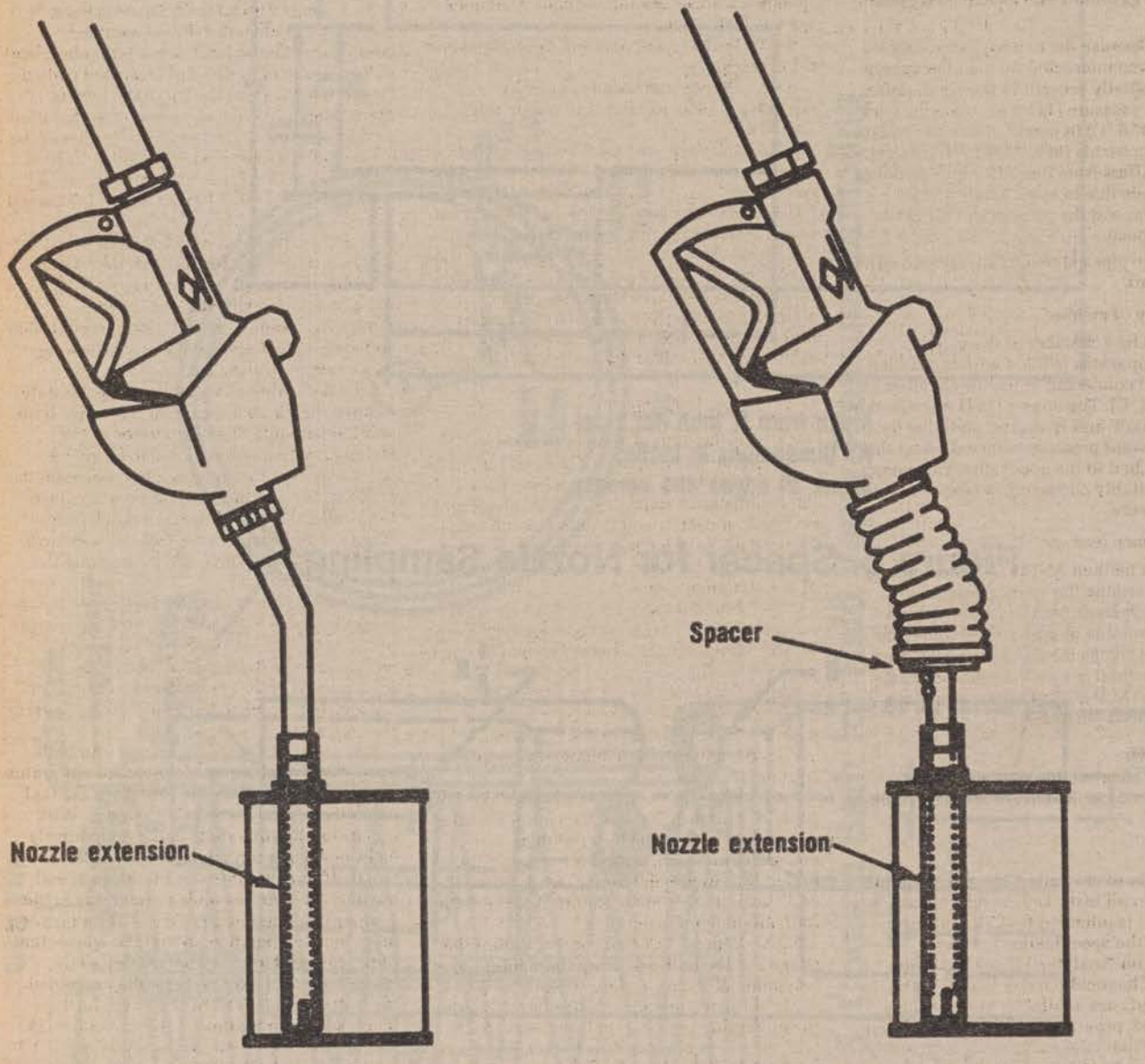


Use ¼ in. Schedule 80 Black Iron Pipe
All dimensions in inches
All tolerances ± 1/128

A—Recommend 30°
B—Inside Diameter Schedule 80 Black Iron Pipe

Figure 7. Nozzle Extension for Nozzle Sampling

-43f-



(a) Nozzle without vapor recovery

(b) Nozzle with vapor recovery

Figure 8. Assembly for Nozzle Sampling

BILLING CODE 6560-50-C

Appendix E—Tests for Determining Reid Vapor Pressure (RVP) of Gasoline and Gasoline-Oxygenate Blends

Method 1—Dry RVP Measurement Method.

1. Scope.

1.1 This test method covers the determination of the absolute vapor pressure (Note 1) of gasolines and gasoline-oxygenate blends.

Note 1: Because the external atmospheric pressure is counteracted by the atmospheric pressure initially present in the air chamber, the "vapor pressure" is an absolute pressure at 100 °F (37.8 °C) in pounds-force per square inch or kilopascals (kPa=kN/m²). This vapor pressure differs from the true vapor pressure of the sample due to some small sample vaporization and the presence of air in the confined space.

1.2 The values stated in inch-pound units are standard.

2. Summary of method.

2.1 The fuel chamber of the vapor pressure apparatus is filled with the chilled sample and connected to the air chamber at 100 °F (37.8 °C). The apparatus is immersed in a bath at 100°F and is shaken periodically until a constant pressure is observed on the gauge attached to the apparatus. The gauge reading, suitably corrected, is reported as the vapor pressure.

3. Significance and use.

3.1 Test method ASTM D-323 cannot be used to determine the vapor pressure of gasoline-oxygenate blends which contain water-extractable oxygenates because the fuel sample comes into contact with water. This test method is a modification of Test Method ASTM D-323 where contact with water has been eliminated.

4. Apparatus.

4.1 The construction of the required apparatus is described in Annex A1.1 of this Appendix.

5. Reagents.

5.1 Purity of reagents. Use reagent grade chemicals in all tests. Unless otherwise indicated, it is intended that all reagents conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society where such specifications are available. Other grades may be used, provided it is first ascertained that the reagent is of sufficiently high purity to permit its use without lessening the accuracy of the determination.

5.2 Acetone (Danger—Extremely flammable. See Annex A3).

5.3 Naphtha (Danger-Extremely flammable. See Annex A2).

6. Handling of samples.

6.1 The extreme sensitivity of vapor pressure measurements to losses through evaporation and the resulting changes in composition is such as to require the utmost precaution and the most meticulous care in the handling of samples. The provisions of this section apply to all samples for vapor pressure determinations.

6.2 Sample in accordance with 40 CFR Part 80, Appendix D.

6.3 Sample container size. The size of the sample container from which the vapor pressure sample is taken is 1 quart (1 liter). It will be 70 to 85% filled with the sample.

6.4 Precautions.

6.4.1 Determine vapor pressure as the first test run on a sample. Do not withdraw more than one sample from the sample container for this test.

6.4.2 Protect samples from excessive heat prior to testing.

6.4.3 Do not test samples in leaky containers. Discard them and obtain new samples.

6.4.4 Discard samples that have separated into two phases and obtain new samples (see Note 4).

6.4.5 Sample handling temperature. In all cases, cool the sample container and contents to 32 to 34 °F (0 to 1 °C) before the container is opened. To ensure sufficient time to reach this temperature, directly measure the temperature of a similar liquid at a similar initial temperature in a like container placed in the cooling bath at the same time as the sample.

7. Preparation for test.

7.1 Verification of sample container filling. With the sample at a temperature of 32 to 34 °F (0 to 1 °C), take the container from the cooling bath, wipe dry with an absorbent material, unseal it, and examine its ullage. The sample content, as determined by use of a suitable gauge, must be equal to 70 to 80% of the container capacity.

7.1.1 Discard the sample if its volume is less than 70% of the container capacity.

7.1.2 If the container is more than 80% full, pour out enough sample to bring the container contents within the 70 to 80% range. Under no circumstance may any sample poured out be returned to the container.

7.2 Air saturation of sample in sample container.

7.2.1 With the sample at a temperature of 32 to 34 °F (0 to 1 °C) take the container from the cooling bath, wipe it dry with an absorbent material, unseal it momentarily, taking care to prevent water entry, reseal it, and shake it vigorously. Return it to the bath for a minimum of 2 minutes.

7.2.2 Repeat 7.2.1 twice more. Return the sample to the bath and keep there until the beginning of the procedure (8.1).

7.3 Preparation of fuel chamber. Observe the apparatus preparation procedure of 8.5, then store the stoppered fuel chamber and the sample transfer connection in a refrigerator or ice-water bath for a sufficient time to allow the chamber and the connection to reach a temperature of 32 to 34 °F (0 to 1 °C). If an ice-water bath is used, keep the chamber upright, corked, and not immersed over the top of the coupling threads. The transfer connection is inserted into a plastic bag to keep it completely dry during cooling.

7.4 Preparation of air chamber. Observe the apparatus preparation procedure of 8.5. Connect the gage to the air chamber and close the lower opening securely with a dry No. 6½ rubber stopper. Make sure the stopper is inserted far enough to securely close the vent hole in the air chamber connection. Immerse the air chamber to at least 1 inch (25 mm.) above its top in the water bath maintained at 100 ± 0.2 °F (37.8 ± 0.1 °C) for not less than 20 minutes. Do not remove the air chamber from the water bath until the fuel chamber has been filled with the sample as described in 8.1.

8. Procedure

8.1 Sample transfer. With everything in readiness, remove the chilled sample container from the bath, dry it with absorbent material, uncap it, dry and insert the chilled transfer apparatus (see Fig. 1.1). Quickly place the chilled fuel chamber, in an inverted position, over the sample delivery tube of the transfer apparatus. Invert the entire system rapidly so that the fuel chamber is upright, with the end of the delivery tube touching the botton of the fuel chamber. Fill the fuel chamber to overflowing. Withdraw the delivery tube from the fuel chamber while allowing the sample to continue flowing up to the moment of complete withdrawal.

8.1.1 Caution. Make provision for suitable collection and disposal of the overflowing fuel to avoid fire hazard.

8.2 Assembly of apparatus. Immediately remove the air chamber from the water bath and immediately dry the exterior of the chamber with absorbent material, giving particular care to the connection between the air chamber and the fuel chamber. Remove the stopper after drying and immediately couple the two chambers. Not more than 10 seconds shall be consumed in coupling the two chambers.

Note 2: When the air chamber is removed from the water bath, is dried, and the stopper is removed, connect it to the fuel chamber without undue movements through the air, which could promote exchange of room temperature air with the 100 °F (37.8 °C) air in the chamber.

8.3 Introduction of apparatus into bath. Turn the assembled vapor pressure apparatus upside down to allow the sample in the fuel chamber to run into the air chamber. With apparatus still inverted, shake it vigorously eight times in a direction parallel to the length of the apparatus. With the gage end up, immerse the assembled apparatus in the bath, maintained at 100±0.2 °F (37.8±0.1 °C), in an inclined position so that the connection of the fuel and air chambers is below the water level and may be carefully examined for leaks. If no leaks are observed, further immerse the apparatus to at least 1 inch (25 mm.) above the top of the air chamber. Observe the apparatus for leakage throughout the test. Discard the test at any time a leak is detected.

Note 3: Liquid leaks are more difficult to detect than vapor leaks; because the coupling between the chambers is normally in the liquid section of the apparatus, give the coupling particular attention.

Note 4: After the apparatus has been immersed in the bath, check the remaining sample for phase separation. If the sample is contained in a glass container, this observation can be made prior to sample transfer (8.1). If the sample is contained in a non-transparent container, shake the sample vigorously for 5 seconds and then

immediately pour a portion of the remaining sample into a clear glass container. Immediately after shaking this sample again for 5 seconds, observe the sample for phase separation. If this sample is not clear and bright, and free of a second phase, discard the test and the sample.

8.4 Measurement of vapor pressure. After the assembled vapor pressure apparatus has been immersed in the bath for at least 5 minutes, tap the pressure gage lightly and observe the reading. Withdraw the apparatus from the bath and repeat 8.3. At intervals of not less than 2 minutes, perform 8.3 until a total of not less than five shakings and gage readings have been made; continue thereafter, if necessary, until the last two consecutive gage readings are constant, indicating equilibrium attainment. These operations normally require 20 to 30 minutes. Read the final gage pressure to the nearest 0.05 psi (0.25 kPa) for gages with intermediate graduations of 0.1 psi (0.5 kPa) or less and to the nearest 0.1 psi for gages with graduations of 0.2 to 0.5 psi (1.0 to 2.5 kPa), and record the value as the "uncorrected vapor pressure" of the sample. Without undue delay remove the pressure gage and, without attempting to remove any liquid which may be trapped in the gage, check its reading against that of the manometer while both are subjected to a common steady pressure which is no more than 0.2 psi (1.0 kPa) different from the recorded "uncorrected vapor pressure". If a difference is observed between the gage and manometer readings, the difference shall be added to or subtracted from the "uncorrected vapor pressure" recorded for the sample being tested, and the resulting value shall be recorded as the vapor pressure of the sample.

Note 5: Cooling the assembly prior to disconnecting the gage will facilitate disassembly and reduce the amount of hydrocarbon vapors released in the room.

Note 6: Verification of Sample Integrity. Disconnect the air chamber from the fuel chamber. Drain the sample from the air and fuel chambers as completely as possible into a dry 8-ounce clear glass bottle. Seal the bottle and shake it vigorously for 5 seconds. If the sample is clear and bright and free of a second phase, note this observation and record that the test is valid. If the sample is not clear and bright and free of a second phase, immerse the bottle in the 100 °F (37.8 °C) water bath up to about 1 inch (25 mm.) above the top of the sample level for 15 minutes in order to heat the sample to the test temperature. Remove the sample from the water bath and immediately shake it vigorously for 5 seconds and observe the sample. If the sample is not clear and bright and free of a second phase, note this observation and record that the test is not valid because of phase separation. A fuel that is not clear and bright and free of a second phase at this point of the test indicates that the fuel was contacted with sufficient water to exceed the water tolerance of the fuel during the test procedure. Water can most likely get into the test chambers during preparation of the fuel and air chambers (7.3 and 7.4) or assembly of the air and fuel chambers (8.2), or both, especially if water baths are used for these procedures.

8.5 Preparation of apparatus for next test. Thoroughly purge the air chamber of residual sample by filling it with warm water above 90 °F (32 °C) and allowing it to drain (Note 5). Repeat this purging at least five times. After disconnecting the pressure gage from its manifold connection with the manometer, remove trapped fluid in the Bourdon tube of the gage by repeated centrifugal thrusts. This may be accomplished in the following manner: hold the gage between the palms of the hands with the right hand on the face side and the threaded connection of the gage forward. Extend the arms forward and upward at an angle of 45° with the coupling of the gage pointing in the same direction. Swing the arms downward through an arc of about 135° so that the centrifugal force aids gravity in removing the trapped liquid. Repeat this operation three times to expel all liquid. Purge the pressure gage by directing a small jet of air into its Bourdon tube for at least 5 minutes. Rinse both chambers and the sample transfer connection several times with hot water, then several times with acetone, then dry by blowing dried air or pulling a vacuum. Stopper the fuel chamber and place it in the refrigerator or ice-water bath for the next test.

Note 7: If the purging of the air chamber is done in a bath, be sure to avoid small and unnoticeable films of floating sample by keeping the bottom and top openings of the chamber closed as they pass through the water surface.

9. Precautions

9.1 Gross errors can be obtained in vapor pressure measurements if the prescribed procedure is not followed carefully. The following list emphasizes the importance of strict adherence to the precautions given in the procedure.

9.1.1 Checking the pressure gage. Check all gages against a manometer after each test in order to ensure high precision of results (8.4). Read all gages while the gages are in a vertical position and after tapping them lightly.

9.1.2 Shake the container vigorously to ensure equilibrium of the sample with the air in the container (7.2).

9.1.3 Checking for leaks. Check the apparatus before and during each test for both liquid and vapor leaks (Annex A1.1.6 to this Appendix and Note 3).

9.1.4 Check O-rings before each test for cracking and clean if necessary.

9.1.5 *Sampling.* Because initial sampling and the handling of samples will greatly affect the final results, employ the utmost precaution and the most meticulous care to avoid losses through evaporation and even slight changes in composition (6.5 and 8.1). In no case shall any part of the apparatus itself be used as the sample container previous to actually conducting the test.

9.1.6 *Purging the apparatus.* Thoroughly purge the pressure gage, the fuel chamber and the air chamber to be sure they are free of residual sample. (This is most conveniently done at the end of the previous test. See 8.5). It is important to remove all water from the apparatus before cooling the gasoline chambers and heating the air chamber. In high-humidity conditions be alert for and avoid condensation on the transfer connection and interior walls of the apparatus.

9.1.7 *Coupling the apparatus.* Carefully observe the requirements of 8.2.

9.1.8 *Shaking the apparatus.* Shake the apparatus "vigorously" as directed in 8.3 in order to ensure equilibrium.

10. Report.

10.1 *Reporting results.* Report to the nearest 0.05 psi (0.25 kPa) or 0.1 psi (0.5 kPa) the gage result observed in 8.4, after correcting for any difference between the gage and manometer, as the "vapor pressure" in pounds-force per square inch (or kilopascals) without reference to temperature.

11. Precision and Accuracy

11.1 *Precision.* The precision of this test method has not been determined.

11.2 *Accuracy.* The accuracy of this test method has not been determined.

BILLING CODE 6560-50-M

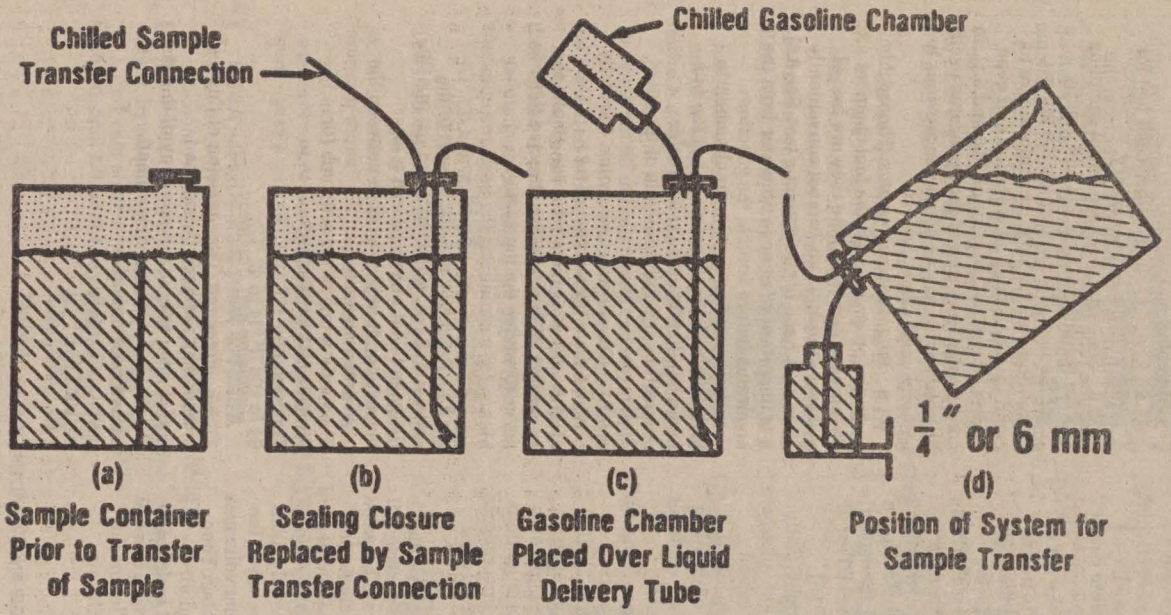


Figure 1.1 Simplified Sketches Outlining Method of Transferring Samples of Gasoline Chamber from Open-Type Containers

BILLING CODE 6560-50-C

Annex A1. Apparatus for Reid Vapor Pressure Test

A1.1 Reid Vapor Pressure Bomb, consisting of two chambers, an air chamber (upper section) and a gasoline chamber (lower section) shall conform to the following requirements:

Note A1.1: Caution—To maintain the correct volume ratio between the air chamber and the gasoline chamber, the units shall not be interchanged without recalibrating to ascertain that the volume ratio is within satisfactory limits.

A1.1.1 Air Chamber—The upper section or air chamber, as shown in Fig. A1.1, shall be a cylindrical vessel 2±⅛ inches (51±3 mm.) in diameter and 10±⅛ inches (254±3 mm.) in length, inside dimensions, with the inner surfaces of the ends slightly sloped to provide complete drainage from either end when held in a vertical position. On one end of the air chamber, a suitable gage coupling with an internal diameter not less than 3/16 inch shall be provided to receive the ¼ inch gage connection. In the other end of the air chamber an opening approximately ½ inch in diameter shall be provided for coupling with the gasoline chamber. Care shall be taken that the connections to the end openings do not prevent the chamber from draining completely.

A1.1.2 Gasoline Chamber (One-Opening)—The lower section or gasoline chamber, as shown in Fig. A1.1, shall be a cylindrical vessel of the same inside diameter as the air chamber and of such volume that the ratio of the volume of the air chamber to the volume of gasoline chamber shall be between the limits of 3.8 and 4.2. In one end of the gasoline chamber an opening approximately ½ inch in diameter shall be provided for coupling with the air chamber. The inner surface of the end containing the coupling member shall be sloped to provide complete drainage when inverted. The other end of the gasoline chamber shall be completely closed.

A1.1.3 Gasoline Chamber (Two-Opening)—For sampling from closed vessels, the lower section or gasoline chamber, as shown in Fig. A1.1 shall be essentially the same as the gasoline chamber described in A1.1.2, except that a ¼ inch valve shall be attached near the bottom of the gasoline chamber and a ½ inch straight-through, full-opening valve shall be introduced in the coupling between the chambers. The volume of the gasoline chamber, including only the capacity enclosed by the valves, shall fulfill the volume ratio requirements as set forth in A1.1.2.

Note A1.2: In determining capacities for the two-opening gasoline chamber (Fig. A1.1), the capacity of the gasoline chamber shall be considered as that below the ½ inch valve closure. The volume above the ½ inch valve closure, including the portion of the coupling permanently attached to the gasoline chamber, shall be considered as a part of the air chamber capacity.

A1.1.4 Method of Coupling Air and Gasoline Chambers—Any method of coupling the air and gasoline chambers may be employed, provided that no gasoline is lost during the coupling operation, that no compression effect is caused by the act of coupling, and that the assembly is free of leaks under the conditions of the tests. To avoid displacement of gasoline during assembly, it is desirable that the male fitting of a suitable coupling be on the gasoline chamber. To avoid compression of air during the assembly of a suitable screw coupling, a vent hole may be used to ensure atmospheric pressure in the air chamber at the instant of sealing.

Note A1.3: Caution—Some commercially available equipment does not make adequate provision for avoiding air compression effects. Before employing any apparatus, it shall be established that the act of coupling does not compress the air in the air chamber. This may be accomplished by tightly stoppering the gasoline chamber opening and assembling the apparatus in the normal manner, utilizing the 0 to 5-psi (0 to 35-kPa) gage. Any observable pressure increase on the gage is an indication that the apparatus does not adequately meet the specifications of the method. If this problem is encountered, the manufacturer should be consulted for remedy.

A1.1.5 Volumetric Capacity of Air and Gasoline Chambers—In order to ascertain if the volume ratio of the chambers is between the specified limits of 3.8 to 4.2, measure a quantity of water greater than will be needed to fill the gasoline and air chambers. The gasoline chamber shall be completely filled with water, and the difference between the original volume and the remaining volume is the volume of the gasoline chamber. Then, after connecting the gasoline and air chambers, the air chamber shall be filled to the seat of the gage connection with more of the measured water, and the difference in volumes shall be the volume of the air chamber.

A1.1.6 Checking for Freedom of Leaks—Before placing new apparatus in service and as often as necessary thereafter, the assembled vapor pressure apparatus shall be checked for freedom of leaks by filling with air to 100-psi (700-kPa) gage pressure and completely immersing in a water bath. Only apparatus which stand this test without leaking shall be used.

A1.2 Pressure Gage—The pressure gage shall be a Bourdon-type spring gage of test gage quality 4½ to 5½ inches (100 to 150 mm) in diameter provided with a nominal ¼ inch male thread connection with a passageway not less than 3/16 inch in diameter from the Bourdon tube to the atmosphere. The range and graduations of the pressure gage shall be governed by the vapor pressure of the sample being tested, in accordance with Table A1.1. Only accurate gages shall be continued in use. The calibration correction shall not be greater than 0.15 psi (0.3 kPa) for a 0 to 15-psi (0 to 30-kPa) gage or 0.3 psi (0.9 kPa) for a 0 to 30-psi (0 to 90-kPa) gage.

A1.3 Water Cooling Bath—A water cooling bath shall be provided of such dimensions that the sample containers and gasoline chambers may be completely immersed. Means for maintaining the bath at a temperature of 32 to 40 °F (0 to 4.5 °C) shall be provided.

Note A1.4: Solid carbon dioxide shall not be used to cool samples in storage or in the preparation of the air saturation step. Carbon dioxide is appreciably soluble in gasoline, and its use has been found to be the cause of erroneous vapor pressure data.

A1.4 Water Bath—The water bath shall be of such dimensions that the vapor pressure apparatus may be immersed to at least 1 inch (25 mm.) above the top of the air chamber. Means for maintaining the bath at a constant temperature of 100 ±0.2 °F (37.8 ±0.1 °C) shall be provided. In order to check this temperature, the bath thermometer shall be immersed to the 98 °F (37 °C) mark throughout the vapor pressure determination.

A1.5 Thermometers:

A1.5.1 For 100 °F (37.8 °C) Air Chamber Procedure—An ASTM Reid Vapor Pressure Thermometer 18F (18C) having a range from 94 to 108 °F (34 to 42 °C).

A1.5.2 For Water Bath—Use the ASTM Thermometer 18F (18C) described in A1.5.1.

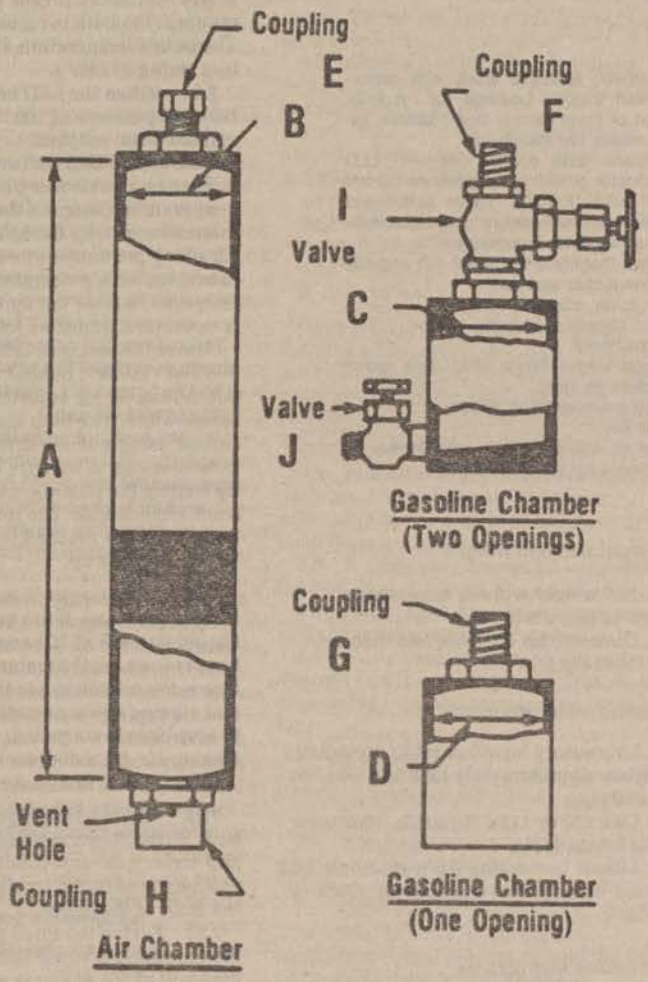
A1.6 Mercury Manometer—A mercury manometer, having a range suitable for checking the pressure gage employed, shall be used. The manometer scale may be graduated in steps of 1 mm., 0.1 inch, 0.1 psi, or 0.001 bar.

TABLE A1.1.—PRESSURE GAGE RANGE AND GRADUATION

Gage to be used							
Reid vapor pressure		Scale range		Maximum numbered intervals		Maximum intermediate graduations	
psi	kPa	psi	kPa	psi	kPa	psi	kPa
4 and under	27.5 and under	0 to 5	0 to 35	1	5.0	0.1	0.5
3 to 12	20.0 to 75.0	0 to 15	0 to 100	3	15.0	0.1	0.5
10 to 26	70.0 to 180.0	0 to 30	0 to 200	5	25.0	0.2	1.0
10 to 36	70.0 to 250.0	0 to 45	0 to 300	5	25.0	0.2	1.0

BILLING CODE 6560-50-M

-61a-



DIMENSIONS OF VAPOR PRESSURE BOMB

Key	Description	In.
A	Air chamber, length	10 ± 1/8
B, C, D	Air and gasoline chambers, ID	2 ± 1/8
E	Coupling, ID min	3/16
F, G	Coupling, OD	1/2
H	Coupling, ID	1/2
I	Valve	1/2
J	Valve	1/4

Figure A1.1 Vapor Pressure Bomb

BILLING CODE 6560-50-C

Annex A2. Gasoline, Gasoline-Oxygenate Blends, Naphtha, Methyl Cyclopentane, Cyclopentane, N-Pentane, Methyl Tert-Butyl Ether, Tert-Amyl Methyl Ether

A2.1 Danger—Extremely flammable. Vapors harmful if inhaled. Vapors may cause flash fire.
A2.2 Keep away from heat, sparks, and open flame.
A2.3 Keep container closed.
A2.4 Use with adequate ventilation.
A2.5 Avoid build-up of vapors and eliminate all sources of ignition, especially nonexplosion-proof electrical apparatus and heaters.
A2.6 Avoid prolonged breathing of vapor or spray mist.
A2.7 Avoid prolonged or repeated skin contact.

Annex A3. Acetone

A3.1 Danger—Extremely flammable. Vapors may cause flash fire.
A3.2 Keep away from heat, sparks, and open flame.
A3.3 Keep container closed.
A3.4 Use with adequate ventilation.
A3.5 Avoid build-up of vapors, and eliminate all sources of ignition, especially nonexplosion-proof electrical apparatus and heaters.
A3.6 Avoid prolonged breathing of vapor or spray mist.
A3.7 Avoid contact with eyes or skin.

Method 2—Herzog Semi-Automatic Method

1. Scope.

1.1 This test method covers the determination of the absolute vapor pressure of gasolines and gasoline-oxygenate blends using the Herzog Semi-Automatic Apparatus.[1] Test procedures will follow Method 1 except for the additions and changes as noted.

2. Summary of method.

2.1 The chilled liquid chamber is filled with a chilled sample and connected to the heated air chamber by means of a screwed connection. The assembled test chambers are immersed in a constant temperature bath controlled to 100 °F±0.2 °F (37.8 °C±0.1 °C) and rotated systematically until a constant pressure is observed on the pressure gauge (approximately 10 minutes). The pressure observed, suitably corrected, is reported as the Reid vapor pressure.

3. Significance and use.

3.1 This method is to be used as an alternative to Method 1. The procedures are essentially the same except that they are modified to represent the use of the Herzog Semi-Automatic Apparatus. As is the case with Method 1, this is considered to be a "dry" method since it can be used to evaluate both gasoline and gasoline-oxygenate blends.

4. Apparatus.

4.1 The Herzog Semi-Automatic Apparatus is composed of air and liquid test chambers, a constant temperature bath and means for observing the absolute pressure developed in the test chamber during the test. The analyzer is designed to allow the testing of three samples simultaneously.

4.2 The Herzog Semi-Automatic Apparatus consists of the equipment and accessories listed below:

1 Waterbath, stainless steel, with motor-driven support bearings for the rotation of three sample test chamber assemblies simultaneously.
1 Electronic bath control unit with LED indicator providing temperature control of ±0.1 °F (0.05 °C) or better and maximum temperature cutoff and minimum liquid level protection.
1 Control thermometer (35–40 °C) and silicone rubber stopper.
1 Bath cover, stainless steel.
3 Liquid sample chambers.
3 Air chambers.
3 Special screw fittings with teflon spiral.
3 Pressure gauges.
1 Liquid chamber filling device.
1 Table key.
1 115V to 220W step-up transformer (if ordered for 115V operation).

5. Physical size and weight.

5.1 Net weight without accessories (empty): 16 pounds (35 kg).
5.2 Dimensions: 39×20×16.5 inches (86×51×42 cm.).

6. Installation requirements.

6.1 Laboratory bench or table providing a work space approximately four feet wide by two feet deep.
6.2 One 220 or 115V 50/60 Hz, 1000 watt grounded receptacle.
6.3 Means for cooling the test sample and the liquid sample test chamber to 32–34 °F (0–1 °C).

7. Installation instructions.

The recommended installation procedure is outlined below:
7.1 Verify that the working voltage corresponds to the requirements of the analyzer.
7.2 Place and level the analyzer on a stable table or laboratory work bench near the required power supply.
7.3 Release all of the function keys on the control unit.
7.4 Fill the heating bath with *distilled* water to the upper line on the guide tube for the bath control thermometer at the rear right of the bath. (Water containing dissolved salts may shorten the life of the analyzer.)
7.5 Insert the bath control thermometer through the bored silicone rubber stopper (supplied) and place in the thermometer guide tube. (Be sure to coat the glass thermometer with a lubricant and wear punctureproof gloves and safety glasses to avoid breakage and possible injury.)
7.6 Connect the analyzer to the power supply.
7.7 Press the "MAINS" key.
7.8 Press the "STIRRER" key; bath circulation will start.
7.9 Press the "HEATING" key; bath heater will start.

Note 1: It may be necessary to press the "START TROUBLE" switch to begin operation.

7.10 After the preset temperature is reached, the bath is regulated electronically. The bath's temperature stability is indicated by a string of LED's.
7.11 When the LED marked "0" lights, the bath temperature of 100 °F (37.8 °C) (factory set) has been reached.

Note 2: The LED indicator is an optical aid, indicating a deviation from a preset temperature. Compare the bath control thermometer with the LED indicator. Checking the temperature with a calibrated thermometer is recommended. If the bath temperature does not agree with the desired temperature, adjust as follows:

Above the string of LED's is an opening marked "TEMP", behind which is a potentiometer for adjusting the bath temperature. The bath temperature can be *raised*, using a screw driver, by turning the potentiometer *clockwise* and can be *lowered* by turning the potentiometer *counterclockwise*. The readjusted temperature is reached when the LED at the "0" mark lights up.

Note 3: Maximum bath temperature and level is provided. If the bath temperature should rise 4 °F (2 °C) above the set test temperature, or the water level should drop below the minimum acceptable level, heating and stirring will automatically shut off. After the problem is corrected, the heating and stirring can be reactivated by pressing the "START TROUBLE" key.

7.12 Remove the shipping screw from the back of the Bourdon precision pressure gauge and replace the screw with the screw that will be found in the small envelope taped to the front of the gauge.
7.13 Fasten the three pressure gauges to the appropriate vapor line connections along the back of the analyzer with the union nut. *Make certain that the teflon seals are in place and the connection is vapor tight.*

8. Test procedure.

Observe all sections of Method 1 from section 5, *"Reagents,"* through section 11, *"Precision and accuracy,"* except for the following changes:
7.4 Preparation of Air Chamber—Observe the apparatus preparation procedure of section 8.5. Stopper the lower connection of the Herzog air chamber with a #3 rubber stopper and the vent hole with either a #000 cork or a small rubber stopper. Connect the spiral tubing T handle coupling to the air chamber and the quick action coupling to the gage or transducer connection. Immerse the air chamber in the water bath maintained at 100 °F±0.2 °F (37.8 °C±0.1 °C) for not less than 10 minutes just prior to coupling it with the gasoline chamber. Do not remove the air chamber for the bath until the gasoline chamber has been filled with sample as described in 8.1.
8.3 Introduction of the apparatus into bath. Tilt the assembled apparatus to 20 ° to 30 ° downward for four or five seconds to allow the sample to flow into the vapor

[1] Manufactured by Walter Herzog, GMBH, D-6970, Lauda, West Germany.

chamber without getting into the tube extending into the vapor chamber. Place the assembled apparatus in the water bath (maintained at 100 °F±0.2 °F (37.8C±0.1 °C)) in such a way that the base of the gasoline chamber engages the drive coupling and the other end of the assembly rests on its support bearing. Observe the apparatus for leakage thoughout the test. Discard the test at any time a leak is detected.

8.4 Measurement of vapor pressure. After the assembled vapor pressure apparatus has been immersed in the bath for at least 5 minutes, tap the pressure gage lightly and observe the reading. Repeat the tapping at intervals of not less than 2 minutes until two consecutive readings agree. (Tapping is not necessary with the transducer model but reading intervals should be the same.) Record this value as the "uncorrected vapor pressure". Refer to the gage on transducer calibration for the respective unit and add or subtract from the observed uncorrected value any offset indicated by the calibration in that range. Record this value as the Reid vapor pressure of the sample.

8.5 Preparation of apparatus for next test. Disconnect the quick action and T handle couplings. Separate the air and gasoline chambers and discard the contained sample. Thoroughly purge the air chamber of residual sample by filling it with warm water above 90 °F (32 °C) and allowing it to drain (Note 5). Repeat this purging at least five times. Rinse both chambers and sample transfer connection several times with hot water, then several times with acetone, then dry by blowing dried air or pulling a vaccum. Assure that no liquid is present in the T handle fitting or spiral tubing by pulling a vacuum through the tubing. Stopper the gasoline chamber and place it in the refrigerator or icewater bath for the next test.

Appendix F—Test for Determining the Quantity of Alcohol in Gasoline

Method 1—Water Extraction Method

1. *Scope.*

This test method covers the determination of the type and amount of alcohols in gasoline.

2. *Summary of method.*

Gasoline samples are extracted with water prior to analysis on a gas chromatograph (GC). The extraction eliminates hydrocarbon interference during chromatography. A known quantity of isopropanol is added to the fuel prior to extraction to act as an internal standard.

3. *Sample description.*

3.1 Sample in accordance with 40 CFR Part 80, Appendix D.

3.2 At least 100 ml. of gasoline suspected of containing ethanol and/or methanol are required.

4. *Apparatus.*

4.1 Gas chromatograph—A gas chromatograph equipped with a flame ionization detector.

4.2 Column—A gas chromatograph column, glass, 1800 by 6.35 cm. outside diameter, packed with chromosorb 102.

4.3 Recorder—A 1-mv recorder with a 1 second full scale response and a chart speed of 10 mm. per minute (0.4 inches per minute).

4.4 Syringe (100 ul.) for adding the internal standard.

4.5 Pipet.

4.6 Injection syringe (10 ul.).

4.7 Extraction syringe (1–5 ml.) with 3-inch needle.

4.8 250 ml. (½ pint) glass sample bottles with screw caps or equivalent.

4.9 Calibration standard solutions extracted from gasoline containing known quantities of alcohols.

4.10 Reference standard solutions extracted from gasoline containing known quantities of alcohols.

4.11 Distilled water.

4.12 Reagent grade isopropanol.

4.13 Rubber gloves.

4.14 I.D. tags.

5. *Precautions.*

Note 1: Gasoline and alcohols are extremely flammable and may be toxic over prolonged exposure. Methanol is particularly hazardous. Persons performing this procedure must be familiar with the chemicals involved and all precautions applicable to each.

5.1 Extractions and dilutions must be performed in well-ventilated areas, preferably under a fume hood, away from open flames and sparks.

5.2 Rubber gloves must be worn during the handling of gasoline and alcohols.

5.3 Avoid breathing fumes from gasoline and alcohols, particularly methanol.

5.4 Gas cylinders must be properly secured and the hydrogen FID fuel must be segregated from the compressed air (oxidizer) tank.

6. *Visual inspection.*

6.1 Ensure that the samples do not certain sediment or separated phases prior to extraction.

6.2 Ensure adequate quantities of GC supply gases to maintain a run.

7. *Test article preparation.*

7.1 Gas chromatography—Use carrier gas, flow rates, detector and injection temperatures and column as specified in the GC manufacturer's specifications.

7.2 Sample extraction, preparation and analysis.

7.2.1 Label two 6 ml. vials with the sample identification number supplied with the original sample. The estimated percent alcohol from any screening tests must also be included on the label.

7.2.2 Pipet 4 ml.±0.01 ml. of sample into one of the vials. Label as vial #1.

7.2.3 Measure 100 ul. (0.1 ml.)±0.5 ul. of isopropanol into vial #1.

Note: This adds an internal standard to the sample which is required for accurate analysis.

7.2.4 Add 1 ml.±0.2 ml. of distilled water to the gasoline sample in vial #1 and shake for 10 seconds.

7.2.5 Allow the mixture to separate into two phases (at least 5 minutes).

7.2.6 Carefully draw off the aqueous (lower) phase using a 5 ml. syringe and long needle.

Note: Be careful not to allow any of the gasoline phase to get into the needle. Leave a small amount (approximately 0.2 ml.) of the aqueous phase in the vial.

7.2.7 Transfer the aqueous phase into the other 6 ml. vial (vial #2).

7.2.8 Repeat steps 7.2.4 to 7.2.6 two more times.

7.2.9 Fill vial #2 (the aqueous phase) to 4 ml.±0.05 ml. with distilled water.

7.2.10 Retain the remaining original gasoline sample (not the gasoline phase).

7.2.11 Discard the extracted gasoline phase in vial #1 in an appropriate manner.

7.2.12 Perform a second extraction on one sample in every 20. This sample is to be labeled with the sample number and as a duplicate and run as a normal sample.

7.2.13 Transfer approximately 2 ml. of the aqueous solution to vials compatible with the autosampler. Tag the vial with the sample number.

7.2.14 Perform analysis of the sample according to the GC manufacturer's specifications.

7.3 Standards.

7.3.1 Calibration standard solutions (made in gasoline).

7.3.1.1 Reagent grade or better alcohols (including undenatured ethanol) are to be diluted with regular unleaded gasoline. The isopropanol internal standard is to be added during extraction of the alcohols. Newly acquired stocks of reagent grade alcohols shall be diluted to 10% with hydrocarbon-free water and analyzed for contamination by GC before use.

7.3.1.2 Required calibration standards (% by volume in gasoline):

Alcohol	Range (percent)	Standard (MIN)
Methanol	0.5–12	5
Ethanol	0.5–11	5

The standards should be as equally spaced within the range as possible and may contain more than one alcohol.

Note: Level #1 must contain all of the alcohols.

8. *Quality control provisions.*

8.1 Alcohol(s) in water solution may be used to characterize the GC. The resulting characterization always reflects the absolute sensitivity of the instrument to each alcohol.

8.2 Calibration standards are made by extraction of known alcohol(s) in gasoline blends. These standards account for inaccuracies caused by incomplete extraction of alcohols.

8.3 The addition of isopropanol as an internal standard reduces errors caused by variations in injection volumes, and further reduces inaccuracies caused by incomplete extraction of alcohols.

8.4 Sufficient sample should be retained to permit reanalysis.

8.5 Running averages of reference standards data must not exceed 0.75% of applicable limits or investigation should be started for the cause of such variation.

9. *Calculations.*

9.1 Calculate purity of component as follows:

$$P_i = \frac{A_i}{\Sigma_A}$$ expressed as a decimal fraction, that is 0.999

where:

P_i = purity of component i,
A_i = area of response of component i, and
Σ_A = total area response of all components.

9.2 Calculate response factors as follows:

$$F_i = \frac{A_{is} \times W_i \times P_i}{A_i \times W_{is} \times P_{is}}$$

where:

F_i = response factor for component of interest i,
A_i = area response for component of interest i,
A_{is} = area response of internal standard,
W_i = weight of component of interest i (be sure to consider all sources),
W_{is} = weight of internal standard,
P_i = purity of component of interest i as determined in 9.1 expressed as a decimal, and
P_{is} = purity of internal standards as determined in 9.1 expressed as a decimal.

9.3 Calculate the percent alcohols as follows:

$$C_i = \frac{W_{is} \times A_i \times F_i}{W_i \times A_{is}} \times 100 = \text{weight \% component i}$$

where:

A_i = peak area component i,
A_{is} = peak area of internal standard,
W_i = weight of sample,
W_{is} = weight of internal standard, and
F_i = response factor for component i.

10. *Report.*

10.1 Report results to the nearest 0.1%.

11. *Precision and accuracy.*

11.1 Precision—The precision of this test method has not been determined.

11.2 Accuracy—The accuracy of this test method has not been determined.

Method 2—Test Method for Determination of C_1 to C_4 Alcohols and MTBE in Gasoline by Gas Chromatography

1. *Scope.*

1.1 This test method covers a procedure for determination of methanol, ethanol, isopropanol, n-propanol, isobutanol, sec-butanol, tert-butanol, n-butanol, and methyl tertiary butyl ether (MTBE) in gasoline by gas chromatography.

1.2 Individual alcohols and MTBE are determined from 0.1 to 10 volume %. Any sample found to contain greater than 10 volume % of an alcohol or MTBE shall be diluted to concentrations within these limits.

1.3 SI (metric) units of measurement are preferred and used throughout this standard. Alternative units, in common usage, are also provided to improve the clarity and aid the user of this test method.

1.4 This standard may involve hazardous materials, operations, and equipment. This standard does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.

2. *Referenced documents.*

2.1 ASTM Standards:

D 4307 Practice for Preparation of Liquid Blends for Use as Analytical Standards[1]
D 4626 Practice for Calculation of Gas ChromatographicResponse Factors[1]
E 260 Practice for Packed Column Gas Chromatographic Procedures[2]
E 355 Practice for Gas Chromatography Terms and Relationships[2]

2.2 EPA Regulations:

40 CFR Part 80 Appendix D

3. *Descriptions of terms specific to this standard.*

3.1 MTBE—methyl tertiary butyl ether.

3.2 Low volume connector—a special union for connecting two lengths of tubing 1.6 mm inside diameter and smaller. Sometimes this is referred to as a zero dead volume union.

3.3 Oxygenates—used to designate fuel blending components containing oxygen, either in the form of alcohol or ether.

3.4 Split ratio—a term used in gas chromatography using capillary columns. The split ratio is the ratio of the total flow of the carrier gas to the sample inlet versus the flow of carrier gas to the capillary column. Typical values range from 10:1 to 500:1 depending upon the amount of sample injected and the type of capillary column used.

3.5 WCOT—abbreviation for a type of capillary column used in gas chromatography that is wall-coated open tubular. This type of column is prepared by coating the inside of the capillary with a thin film of stationary phase.

3.6 TCEP—1,2,3,-tris-2-cyanoethoxypropane—a gas chromatographic liquid phase.

4. *Summary of test method.*

4.1 An internal standard, tertiary amyl alcohol, is added to the sample which is then introduced into a gas chromatograph equipped with two columns and a column switching valve. The sample first passes onto a polar TCEP column which elutes lighter hydrocarbons to vent and retains the oxygenated and heavier hydrocarbons. After methylcyclopentane, but before MTBE elutes from the polar column, the valve is switched to backflush the oxygenates onto a WCOT non-polar column. The alcohols and MTBE elute from the non-polar column in boiling point order, before elution of any major hydrocarbon constituents. After benzene elutes from the non-polar column, the column switching valve is switched back to its original position to backflush the heavy hydrocarbons. The eluted components are detected by a flame ionization or thermal conductivity detector. The detector response, proportional to the component concentration, is recorded; the peak areas are measured; and the concentration of each component is calculated with reference to the internal standard.

5. *Significance and use.*

5.1 Alcohols and other oxygenates may be added to gasoline to increase the octane number. Type and concentration of various oxygenates are specified and regulated to ensure acceptable commercial gasoline quality. Drivability, vapor pressure, phase separation, and evaporative emissions are some of the concerns associated with oxygenated fuels.

5.2 This test method is applicable to both quality control in the production of gasoline and for the determination of deliberate or extraneous oxygenate additions or contamination.

6. *Apparatus.*

6.1 Chromatograph:

6.1.1 A gas chromatographic instrument which can be operated at the conditions given in Table 1, and having a column switching and backflushing system equivalent to Fig. 1. Carrier gas flow controllers shall be capable of precise control where the required flow rates are low (Table 1). Pressure control devices and gages shall be capable of precise control for the typical pressures required.

[1] Annual Book of ASTM Standards, Vol. 05.03.
[2] Annual Book of ASTM Standards, Vol. 14.01.

TABLE 1.—CHROMATOGRAPHIC OPERATING CONDITIONS

Temperatures		Flows, mL/min		Other parameters: Carrier gas, helium	
Column oven, °C	60	To injector	75	Sample size, μL	3
Injector, °C	200	Column	5	Split ratio	15 : 1
Detector—TCD, °C	200	Auxiliary	3	Backflush, min	0.2–0.3
FID, °C	250	Makeup	18	Valve reset time, min	8–10
Valve, °C	60			Total analysis time, min	18–20

6.1.2 Detector—A thermal conductivity detector or flame ionization detector may be used. The system shall have sufficient sensitivity and stability to obtain a recorded deflection of at least 2 mm at a signal-to-noise ratio of at least 5 to 1 for 0.005 volume % concentration of an oxygenate.

6.1.3 Switching and backflushing valve—A valve, to be located within the gas chromatographic column oven, capable of performing the functions described in Section 11, and illustrated in Fig. 1. The valve shall be of low volume design and not contribute significantly to chromatographic deterioration.

6.1.3.1 Valco Model No. CM–VSV–10–HT, 1.6-mm (1/16-in.) fittings. This particular valve was used in the majority of the analyses used for the development of Section 15.

6.1.3.2 Valco Model No. C10W, 0.8-mm (1/32-in.) fittings. This valve is recommended for use with columns of 0.32-mm inside diameter and smaller.

6.1.4 Although not mandatory, an automatic valve switching device is strongly recommended to ensure repeatable switching times. Such a device should be synchronized with injection and data collection times. If no such device is available, a stopwatch, started at the time of injection, should be used to indicate the proper valve switching time.

6.1.5 Injection system—The chromatograph should be equipped with a splitting-type inlet device. Split injection is necessary to maintain the actual chromatographed sample size within the limits of column and detector optimum efficiency and linearity.

6.1.6 Sample introduction—Any system capable of introducing a representative sample into the split inlet device. Microlitre syringes, automatic syringe injectors, and liquid sampling valves have been used successfully.

6.2 Data presentation or calculation, or both:

6.2.1 Recorder—A recording potentiometer or equivalent with a full-scale deflection of 5 mV or less. Full-scale response time should be 1 s or less with sufficient sensitivity and stability to meet the requirements of 6.1.2.

6.2.2 Integrator or computer—Devices capable of meeting the requirements of 6.1.2, and providing graphic and digital presentation of the chromatographic data, are recommended for use. Means shall be provided for determining the detector response. Peak heights or areas can be measured by computer, electronic integration or manual techniques.

6.3 Columns, two as follows:

6.3.1 Polar column—This column performs a preseparation of the oxygenates from volatile hydrocarbons in the same boiling point range. The oxygenates and remaining hydrocarbons are backflushed onto the non-polar column in section 6.3.2. Any column with equivalent or better chromatographic efficiency and selectivity to that described in 6.3.1.1 can be used. The column shall perform at the same temperature as required for the column in 6.3.2.

6.3.1.1 TCEP micro-packed column, 560 mm (22 in.) by 1.6-mm (1/16-in.) outside diameter by 0.38-mm (0.015-in.) inside diameter stainless steel tube packed with 0.14 to 0.15g of 20% (mass/mass) TCEP on 80/100 mesh Chromosorb P(AW). This column was used in the (ASTM) cooperative study to provide the Precision and Bias data referred to in Section 15.

6.3.2 Non-polar (analytical) column—Any column with equivalent or better chromatographic efficiency and selectivity to that described in 6.3.2.1 and illustrated in Fig. 2 can be used.

6.3.2.1 WCOT methyl silicone column, 30m (1181 in.) long by 0.53 mm (0.021-in.) inside diameter fused silica WCOT column with a 2.6-μm film thickness of cross-linked methyl siloxane. This column was used in the (ASTM) cooperative study to provide the Precision and Bias data referred to in Section 15.

7. *Reagents and materials.*

7.1 Carrier gas—Carrier gas appropriate to the type of detector used. Helium has been used successfully. The minimum purity of the carrier gas used must be 99.95 mol %.

7.2 Standards for calibration and identification—Standards of all components to be analyzed and the internal standard are required for establishing identification by retention as well as calibration for quantitative measurements. These materials shall be of known purity and free of the other components to be analyzed.

Note 1.—Warning—These materials are flammable and may be harmful or fatal if ingested or inhaled.

7.3 Preparation of calibration blends—For best results, these components must be added to a stock gasoline or petroleum naphtha, free of oxygenates (Warning—See Note 2). Refer to Test Method D 4307 for preparation of liquid blends. The preparation of several different blends, at different concentration levels covering the scope of the method, is recommended. These will be used to establish the linearity of the component response.

Note 2.—Warning—Extremely flammable. Vapors harmful if inhaled.

7.4 Methylene chloride—Used for column preparation. Reagent grade, free of non-volatile residue.

Note 3.—Warning—Harmful if inhaled. High concentrations may cause unconsciousness or death.

8. *Preparation of column packings.*

8.1 TCEP column packing:

8.1.1 Any satisfactory method, used in the practice of the art that will produce a column capable of retaining the C_1 to C_4 alcohols and MTBE from components of the same boiling point range in a gasoline sample. The following procedure has been used successfully.

8.1.2 Completely dissolve 10 g of TCEP in 100 mL of methylene chloride. Next add 40 g of 80/100 mesh Chromosorb P(AW) to the TCEP solution. Quickly transfer this mixture to a drying dish, in a fume hood, without scraping any of the residual packing from the sides of the container. Constantly, but gently, stir the packing until all of the solvent has evaporated. This column packing can be used immediately to prepare the TCEP column.

9. *Preparation of micro-packed TCEP column.*

9.1 Wash a straight 560 mm length of 1.6-mm outside diameter (0.38-mm inside diameter) stainless steel tubing with methanol and dry with compressed nitrogen.

9.2 Insert 6 to 12 strands of silvered wire, a small mesh screen or stainless steel frit inside one end of the tube. Slowly add 0.14 to 0.15 g of packing material to the column and gently vibrate to settle the packing inside the column. When strands of wire are used to retain the packing material inside the column, leave 6.0 mm (0.25 in.) of space at the top of the column.

9.3 Column conditioning—Both the TCEP and WCOT columns are to be briefly conditioned before use. Connect the columns to the valve (see 11.1) in the chromatographic oven. Adjust the carrier gas flows as in 11.3 and place the valve in the RESET position. After several minutes, increase the column oven temperature to 120 °C and maintain these conditions for 5 to 10 min. Cool the columns below 60 °C before shutting off the carrier flow.

10. *Sampling.*

10.1 Gasoline samples to be analyzed by this test method shall be sampled in accordance with 40 CFR Part 80, Appendix D.

11. *Preparation of apparatus and establishment of conditions.*

11.1 Assembly—Connect the WCOT column to the valve system using low volume connectors and narrow bore tubing. It is important to minimize the volume of the chromatographic system that comes in

contact with the sample, otherwise peak broadening will occur.

11.2 Adjust the operating conditions to those listed in Table 1, but do not turn on the detector circuits. Check the system for leaks before proceeding further.

11.3 Flow rate adjustment.

11.3.1 Attach a flow measuring device to the column vent with the valve in the RESET position and adjust the pressure to the injection port to give 5.0 mL/min flow (14 psig). Soap bubble flow meters are suitable.

11.3.2 Attach a flow measuring device to the split injector vent and adjust flow from the split vent using the A flow controller to give a flow of 70 mL/min. Recheck the column vent flow set in 11.3.1 and adjust if necessary.

11.3.3 Switch the valve to the BACKFLUSH position and adjust the variable restrictor to give the same column vent flow set in 11.3.1. This is necessary to minimize flow changes when the valve is switched.

11.3.4 Switch the valve to the inject position RESET and adjust the B flow controller to give a flow of 3.0 to 3.2 mL/min at the detector exit. When required for the particular instrumentation used, add makeup flow or TCD switching flow to give a total of 21 mL/min at the detector exit.

11.4 When a thermal conductivity detector is used, turn on the filament current and allow the detector to equilibrate. When a flame ionization detector is used, set the hydrogen and air flows and ignite the flame.

11.5 Determine the Time of Backflush—The time to backflush will vary slightly for each column system and must be determined experimentally as follows. The start time of the integrator and valve timer must be synchronized with the injection to accurately reproduce the backflush time.

11.5.1 Initially assume a valve BACKFLUSH time of 0.23 min. With the valve RESET, inject 3 μL of a blend containing at least 0.5% or greater oxygenates (7.3), and simultaneously begin timing the analysis. At 0.23 min., rotate the valve to the BACKFLUSH position and leave it there until the complete elution of benzene is realized. Note this time as the RESET time, which is the time at which the valve is returned to the RESET position. When all of the remaining hydrocarbons are backflushed the signal will return to a stable baseline and the system is ready for another analysis. The chromatogram should appear similar to that illustrated in Fig. 2.

11.5.2 It is necessary to optimize the valve BACKFLUSH time by analyzing a standard blend containing oxygenates. The correct BACKFLUSH time is determined experimentally by using valve switching times between 0.2 and 0.3 min. When the valve is switched too soon, C_5 and lighter hydrocarbons are backflushed and are co-eluted in the C_4 alcohol section of the chromatogram. When the valve BACKFLUSH is switched too late, part or all of the MTBE component is vented resulting in an incorrect MTBE measurement. Chromatograms resulting from incorrect valve times are shown in Figs. 3 and 4.

12. Calibration and standardization.

12.1 Identification—Determine the retention time of each component by injecting small amounts either separately or in known mixtures or by comparing the relative retention times with those in Table 2.

12.2 Standardization—The area under each peak in the chromatogram is considered a quantitative measure of the corresponding compound. Measure the peak area of each oxygenate and of the internal standard by either manual methods or electronic integrator. Calculate the relative volume response factor of each oxygenate, relative to the internal standard, according to Test Method D 4626.

TABLE 2.—RETENTION CHARACTERISTICS FOR TCEP/WCOT COLUMN SET CONDITIONS AS IN TABLE 1

Component	Retention time, min	Relative retention time (t-amyl alcohol = 1.00)
Methanol	3.21	0.44
Ethanol	3.58	0.50
Isopropanol	3.95	0.56
tert-Butanol	4.31	0.61
n-Propanol	4.75	0.68
MTBE	5.29	0.76
sec-Butanol	5.63	0.82
Isobutanol	6.33	0.93
n-Butanol	7.55	1.10
Benzene	7.88	1.17

13. Procedure.

13.1 Preparation of sample—Precisely add a quantity of the internal standard to an accurately measured quantity of sample. Concentrations of 1 to 5 volume percent have been used successfully.

13.2 Chromatographic analysis—Introduce a representative aliquot of the sample, containing internal standard, into the chromatograph using the same technique as used for the calibration analyses. An injection volume of 3 μL with a 15:1 split ratio has been used successfully.

13.3 Interpretation of chromatogram—Compare the results of sample analyses to those of calibration analyses to determine identification of oxygenates present.

14. Calculation.

14.1 After identifying the various oxygenates, measure the area of each oxygenate peak and that of the internal standard. Calculate the volume percent of each oxygenate as follows:

$$V_j = \frac{V_s \times PA_j \times 100}{PA_s \times S_j \times V_G}$$

where:

V_j = volume percent of oxygenate to be determined,

V_s = volume of internal standard (tert-amyl alcohol) added,

V_G = volume of gasoline sample taken,

PA_j = peak area of the oxygenate to be determined,

PA_s = peak area of the internal standard (tert-amyl alcohol), and

S_j = relative volume response factor of each component (relative to the internal standard).

14.2 Report the volume of each oxygenate. If the volume percent exceeds 10%, dilute the sample to a concentration lower than 10% and repeat the procedures in sections 13 and 14.

15. Precision and bias.

15.1 Precision—The precision of this test method as determined by statistical examination of the interlaboratory test results is as follows:

15.1.1 Repeatability—The difference between successive results obtained by the same operator with the same apparatus under constant operating conditions on identical test materials would, in the long run, in the normal and correct operation of the test method exceed the following values only in one case in twenty (see Table 3).

Methanol $0.086 \times (V+0.070)$.
Ethanol $0.083 \times (V+0.000)$.
Isopropanol $0.052 \times (V+0.150)$.
n-Propanol $0.040 \times (V+0.026)$.
Isobutanol $0.064 \times (V+0.086)$
sec-Butanol $0.014 \times \sqrt{V}$
tert-Butanol $0.052 \times (V+0.388)$
n-Butanol $0.043 \times (V+0.020)$

MTBE $0.104 \times (V+0.028)$

where V is the mean volume percent.

15.1.2 Reproducibility—The difference between two single and independent results obtained by different operators working in different laboratories on identical material would, in the long run, exceed the following values only in one case in twenty (see Table 3).

Methanol $0.361 \times (V+0.070)$.
Ethanol $0.373 \times (V+0.000)$.
Isopropanol $0.214 \times (V+0.150)$.
n-Propanol $0.163 \times (V+0.026)$.
Isobutanol $0.179 \times (V+0.086)$
sec-Butanol $0.277 \times \sqrt{V}$
tert-Butanol $0.178 \times (V+0.388)$
n-Butanol $0.415 \times (V+0.020)$

MTBE $0.244 \times (V+0.028)$

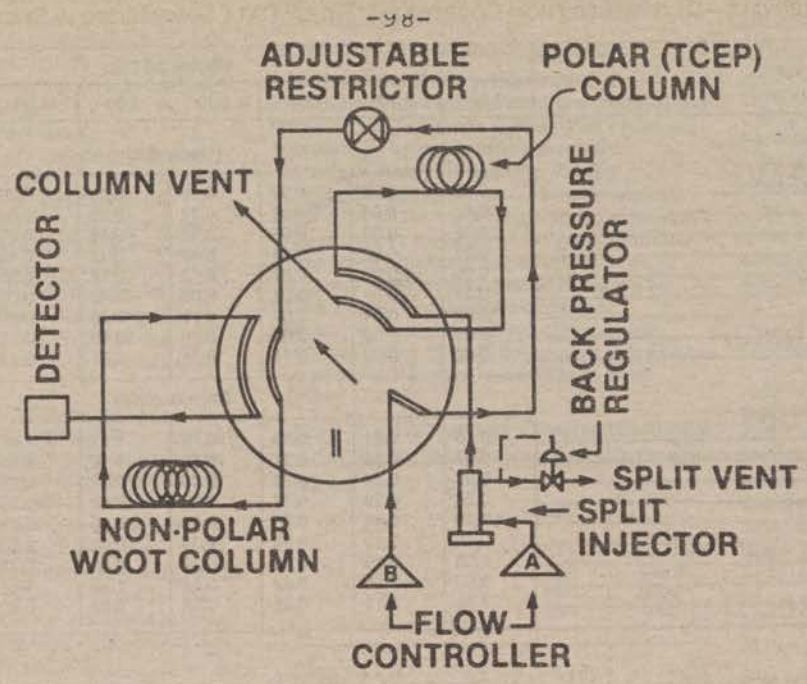
where V is the mean volume percent.

15.2 Bias—Since there is no accepted reference material suitable for determining bias for the procedure in the test method, bias cannot be determined.

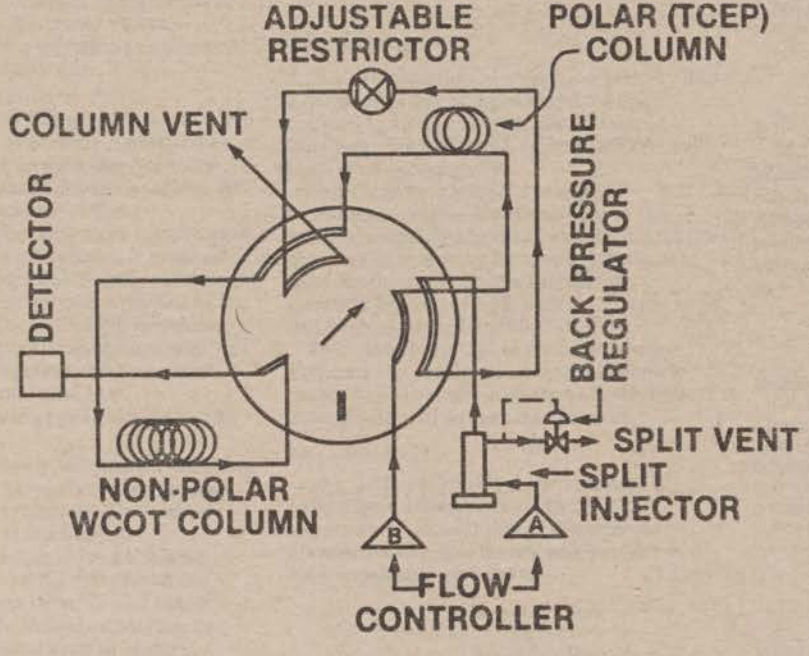
TABLE 3.—PRECISION INTERVALS—DETERMINED FROM COOPERATIVE STUDY DATA SUMMARIZED IN SECTION 15

Components	Volume percent							
	0.20	0.50	1.00	2.00	3.00	4.00	5.00	6.00
Repeatability								
Methanol	0.02	0.05	0.09	0.18	0.26	0.35	0.44	0.52
Ethanol	0.02	0.04	0.08	0.17	0.25	0.33	0.42	0.50
Isopropanol	0.02	0.03	0.06	0.11	0.16	0.22	0.27	0.32
n-Propanol	0.01	0.02	0.04	0.08	0.12	0.16	0.20	0.24
tert-Butanol	0.03	0.05	0.07	0.12	0.18	0.23	0.28	0.33
sec-Butanol	0.01	0.01	0.01	0.02	0.02	0.03	0.03	0.03
Isobutanol	0.02	0.04	0.07	0.13	0.20	0.26	0.33	0.39
n-Butanol	0.01	0.02	0.04	0.09	0.13	0.17	0.22	0.26
MTBE	0.02	0.05	0.11	0.21	0.31	0.42	0.52	0.63
Reproducibility								
Methanol	0.10	0.21	0.39	0.75	1.11	1.47	1.83	2.19
Ethanol	0.07	0.19	0.37	0.75	1.12	1.49	1.87	2.24
Isopropanol	0.07	0.14	0.25	0.46	0.67	0.89	1.10	1.32
n-Propanol	0.04	0.09	0.17	0.33	0.49	0.66	0.82	0.98
tert-Butanol	0.10	0.16	0.25	0.43	0.60	0.78	0.96	1.14
sec-Butanol	0.12	0.20	0.28	0.39	0.48	0.55	0.62	0.68
Isobutanol	0.05	0.10	0.19	0.37	0.55	0.73	0.91	1.09
n-Butanol	0.09	0.22	0.42	0.84	1.25	1.67	2.08	2.50
MTBE	0.05	0.12	0.23	0.45	0.68	0.90	1.13	1.35

BILLING CODE 6560-50-M



Valve in RESET Position



Valve in BACKFLUSH Position

FIG. 1 Analysis of Oxygenates in Gasoline Schematic of Chromatographic System

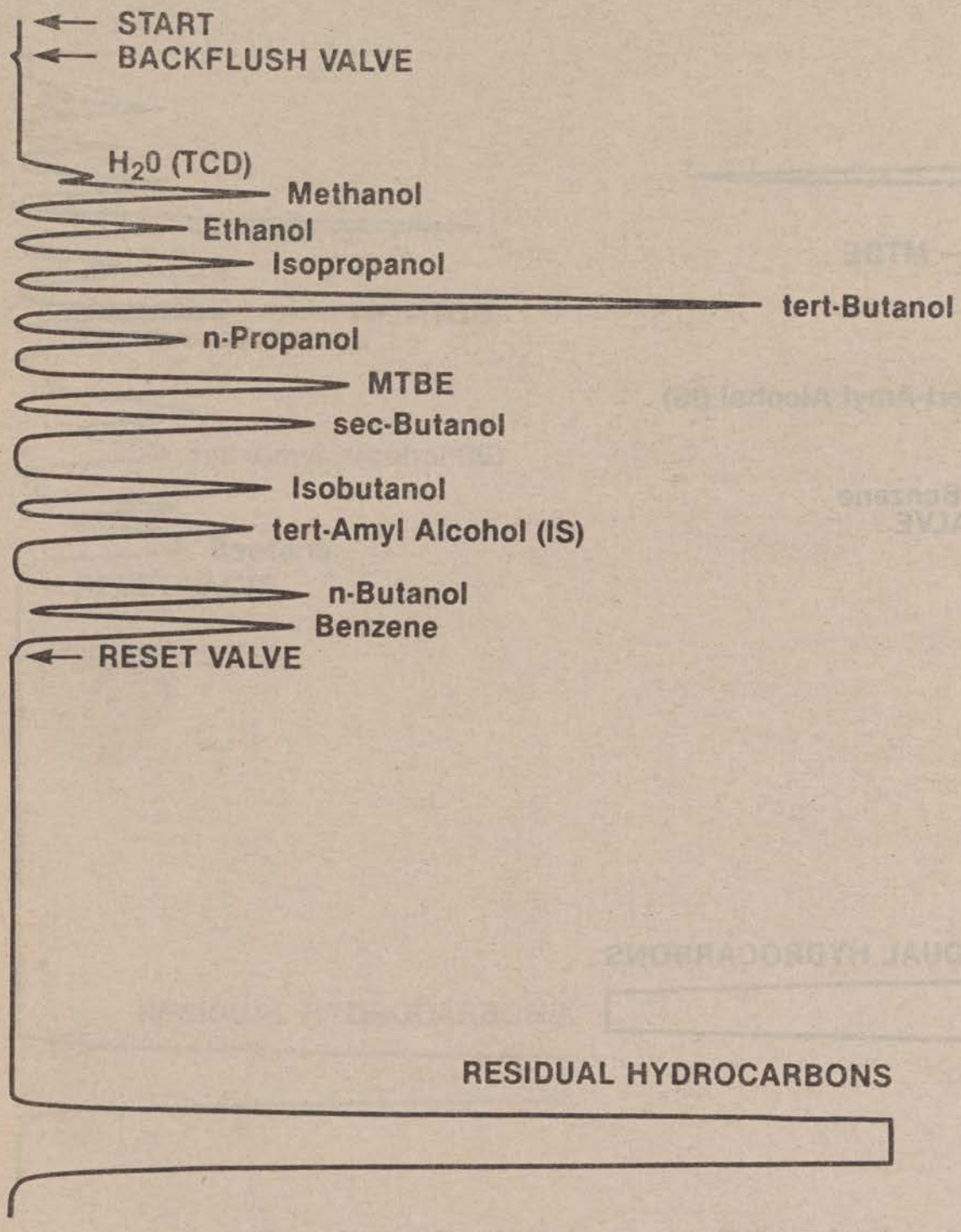


FIG. 2 Analysis of Oxygenates in Gasoline Example of Chromatographic Results

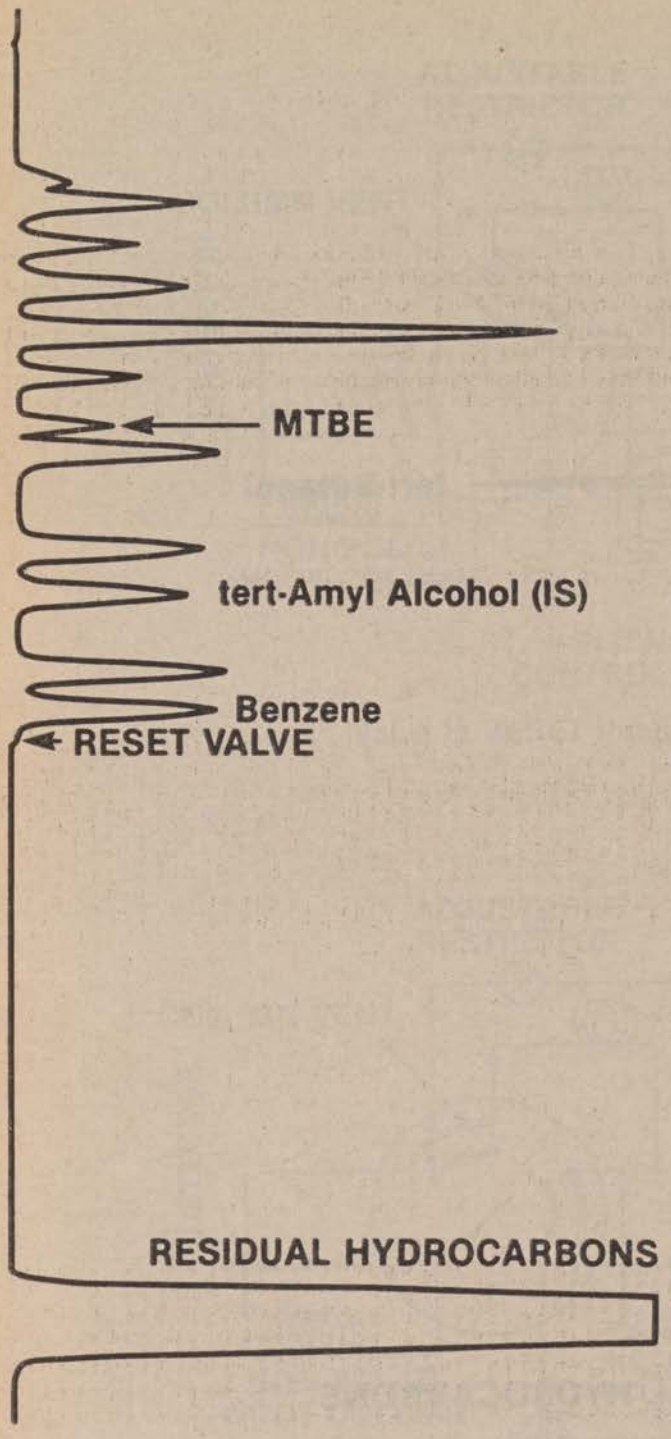


FIG. 3 Analysis of Oxygenates in Gasoline Example Chromatogram Showing Loss of MTBE Due to Venting with Light Hydrocarbons by Late Backflush Time

-101-

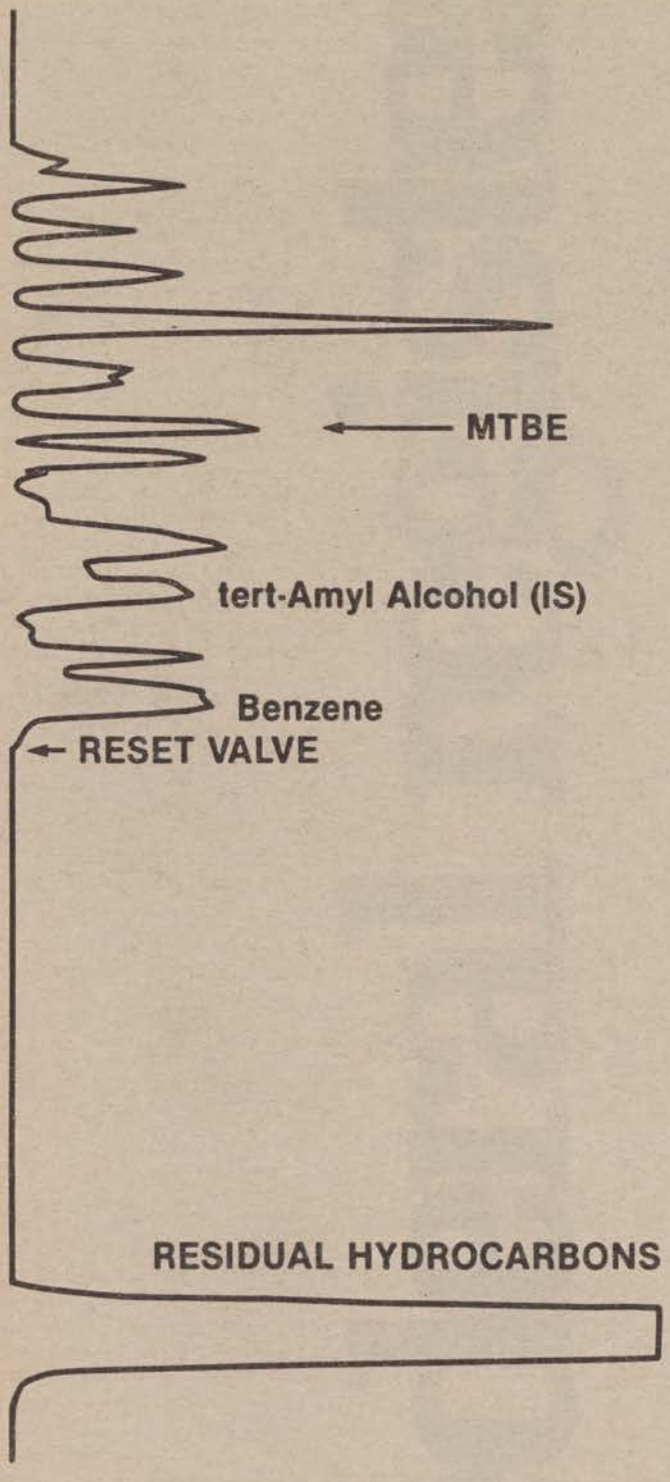


FIG. 4 Analysis of Oxygenates in Gasoline Example Chromatogram Showing Presence of Interferences Caused by Early Backflush Time

[FR Doc. 89-6315 Filed 3-21-89; 8:45 am]
BILLING CODE 6560-50-C

federal register

Wednesday
March 22, 1989

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 13
Rules of Practice for FAA Civil Penalty Actions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 25690; Amdt. No. 13-18]

Rules of Practice for FAA Civil Penalty Actions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments.

SUMMARY: The FAA issued procedural rules, effective upon publication, to implement amendments to the Federal Aviation Act. Because the rules of practice are purely procedural and are necessary to govern on-the-record hearings required by statute, the FAA determined that notice and public comment procedures were not required by law and were impracticable, unnecessary, and contrary to the public interest. However, the FAA provided an opportunity for public comment on the rules after publication in the **Federal Register**. This notice addresses the comments submitted to the public docket on the rules of practice.

FOR FURTHER INFORMATION CONTACT: Allan H. Horowitz, Manager, Enforcement Policy Branch (AGC-260), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3137.

SUPPLEMENTARY INFORMATION: On August 31, 1988, the Federal Aviation Administration (FAA) issued revised initiation procedures and new rules of practice to govern on-the-record hearings mandated by Congress in amendments to the Federal Aviation Act (53 FR 34646; September 7, 1988).

Although the rules of practice were implemented without prior notice and opportunity for comment, the agency allowed interested persons to comment on the final rule within 60 days following publication. Twenty comments were received. This notice responds to those comments.

Adequacy of Notice

Thirteen commenters, including the Section of Administrative Law and Regulatory Practice of the American Bar Association (the "ABA Administrative Section"), criticize the agency's adoption of these procedural rules without first proposing them and affording opportunity for public comment on the proposals. Several of these commenters urge that the Administrative Procedure Act (APA) requires such notice and that the rules are complex and important enough to warrant it. Many of these commenters, as well as many others, also filed comments on the rules themselves.

The notice and comment requirements of the APA do not apply to rules of agency procedure. As noted in the notice publishing the rules, the legislation giving rise to the need for such rules (Pub. L. 100-223) established a Civil Penalty Assessment Demonstration Program (Demonstration Program) limited to two years' duration and required a report of its effectiveness to Congress in only eighteen months. The FAA concluded that expedited rulemaking was required.

Nevertheless, in accordance with the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11034; February 26, 1979), public comments on the rules were invited for a period of 60 days and the public was notified that the rules were subject to change based on the comments. Considering the time in which a matter under the Demonstration Program takes to move through the enforcement process, the agency believes publication of the final rule without prior opportunity for comment has not resulted in any prejudice to interested persons. The agency has considered the comments to the rules of practice before any matter has been conclusively resolved in the administrative process.

As noted, many comments were received following publication of the final rule. Those comments, as well as other comments received to date, have been fully considered by the FAA. In addition, the FAA will continually evaluate the adequacy and efficacy of these rules of practice in light of the experience gained under them in the future. The FAA is obligated to report to Congress by June 30, 1989 on the implementation of the Civil Penalty Assessment Demonstration Program, and remains open to make revisions as may be warranted.

Use of Two Forums to Adjudicate Violations of the Federal Aviation Regulations

Several commenters express concern that the final rule creates a second forum to adjudicate violations of the Federal Aviation Regulations (FAR). Specifically, they contend that cases under the Demonstration Program should be adjudicated by the National Transportation Safety Board (NTSB), which already adjudicates certificate actions. One commenter contends that placing the authority to adjudicate civil penalties in a forum other than the NTSB, which has considerable expertise in the area of aviation safety, may result in forum shopping.

Upon examination of section 609 [49 U.S.C. 1429] and section 905 [49 U.S.C. 1475] of the Federal Aviation Act of 1958 (FAAct), as amended, it is clear that the decision to create two separate forums was that of Congress, not the FAA. Under section 609 of the FAAct, Congress expressly empowered the NTSB, an independent agency, to adjudicate orders suspending or revoking certificates issued by the FAA. On the other hand, Congress, in enacting section 905 in 1987, did not expressly designate the NTSB as the forum to adjudicate proceedings under the Demonstration Program. In the absence of explicit Congressional guidance, the FAA determined that it was inappropriate unilaterally to assign functions and duties, with respect to civil penalty actions under the Demonstration Program, to an independent agency. The NTSB's authority to review Orders of the Administrator is expressly limited to orders that affect certificates issued by the FAA. There is no corresponding provision in the enabling statute of the NTSB that addresses civil penalty actions under the FAR. However, an existing system of administrative law judges, employed by the DOT who preside over aviation economic, hazardous materials enforcement, and other proceedings, was available for use by the FAA in cases involving civil penalty actions. Instead of using the procedural rules specifically applicable to those cases, the FAA promulgated its own rules of practice, specifically applicable to civil penalty cases, for use by the administrative law judges employed by DOT.

The contention that the placement of the authority to adjudicate civil penalty actions in a forum other than the NTSB may result in forum shopping also is without merit. Implementation of the Demonstration Program has not changed the manner in which the FAA determines the appropriate type of legal enforcement action. Indeed, the primary tool the FAA uses to enforce violations of the FAR against a certificate holder is through certificate action. The agency's enforcement policy is reflected in FAA Order 2150.3A, the Compliance and Enforcement Program (Enforcement Handbook), prepared to provide guidance to agency personnel in investigation, reporting, and legal processing of enforcement cases. It was revised most recently in December 1988.

Under section 905, the Administrator is required to report to Congress, not later than June 30, 1989, on the

effectiveness of the Demonstration Program. That report will address any inconsistency between the two forums regarding enforcement of FAR provisions.

Loss of Opportunity for Jury Trial

Four commenters express concern that, in cases subject to the Demonstration Program, an alleged violator will not have an opportunity for a jury trial in a United States district court, an opportunity which previously existed as a matter of statutory right. (It is well-established that the administrative assessment of civil penalties provided by statute does not implicate the constitutional right to a jury trial under the Seventh Amendment. *Atlas Roofing Co.* v. *OSHRC*, 430 U.S. 442 (1977).)

As in the case of other statutory civil penalty schemes (e.g., that governing violations of hazardous materials regulation), Congress chose administrative procedures for adjudication of penalties in this Demonstration Program. The FAA is without authority to alter that legislative choice. Under the prior statutory scheme, requests for jury trials were extremely rare. Under the Demonstration Program, persons subject to civil penalty actions will be offered opportunity for a full hearing before an administrative law judge and, as provided in section 1006 of the FAAct [49 U.S.C. 1486], a final order of the Administrator in such cases is subject to judicial review.

Separation of Functions

Eight commenters express concern that the final rule's separation of prosecutorial functions from adjudicative and decisionmaking functions is inadequate. In particular, several commenters argue that the separation of functions is inconsistent with the APA and with constitutional requirements of due process. A few object generally to any placement of prosecutorial and adjudicative functions within the same agency, under the same agency head.

It should suffice to answer this latter objection to note that the practice of housing within one agency the functions of prosecutor, adjudicator, and decisionmaker is well-established, widespread throughout the Executive Branch of the Federal government, and was expressly contemplated by the drafters of the APA in 1946. In fact, this practice is the rule rather than the exception.

Under § 13.203, civil penalty proceedings are prosecuted by "agency attorneys," heard by "administrative law judges," and decided on appeal by the "FAA decisionmaker." The rule provides that agency attorneys involved in prosecution of a civil penalty action will not participate in or advise the decisionmaker, after a notice of proposed civil penalty has been issued, except as a witness or counsel in the proceedings. The rule provides further that the Chief Counsel will advise the decisionmaker and will not engage in the prosecution or supervision of the prosecution of a case once a notice of proposed civil penalty has been issued.

Several commenters request that this separation of functions be elaborated further; one commenter suggested an organizational change within the Office of Chief Counsel. On January 10, 1989, the agency announced how it will implement the rule's separation of functions (54 FR 1335; January 16, 1989). The Office of Chief Counsel has also disseminated written guidance to all agency personnel who are involved with the enforcement of civil penalty actions, to ensure that the separation of functions is strictly observed. For purposes of the Demonstration Program, the Chief Counsel's office is now organized along the lines that the DOT's General Counsel's office is organized in hearing cases brought under 14 CFR Chapter 2, Parts 200–399: namely, the Chief Counsel advises the decisionmaker, as the General Counsel advises the Secretary; and the Deputy Chief Counsel supervises the agency prosecutors, as does the Deputy General Counsel.

The FAA believes therefore that it has satisfied the concern of the commenters, including the ABA Administrative Section, that the FAA's separation of functions is not as full as DOT's under Part 300. In both sets of rules, the separation of functions is effected only after an enforcement case is initiated. The separation of functions under the Demonstration Program is mandated at the time that a notice of proposed civil penalty is issued. (14 CFR 203(b).) The separation of functions in DOT hearing cases "applies after the initiation of a hearing or enforcement case by the Department." [14 CFR 300.4.] In a DOT enforcement case brought under Part 300, a case is "initiated" upon the filing of a complaint. The separation of functions within the FAA under the Demonstration Program is triggered before a complaint is filed, at the time a notice of proposed civil penalty is issued.

Two commenters are concerned with a purported inconsistency between the FAA's traditional position in hazardous materials cases pursuant to § 13.16, supported by an opinion of the Department's General Counsel, that the requirements of the APA do not apply to such cases, and the express requirement in the statute authorizing the Demonstration Program that civil penalties may be assessed only after notice and an on-the-record hearing, in accordance with section 554 of the APA. There is no inconsistency. As the *heading* of revised § 13.16 makes abundantly clear, all hazardous materials civil penalty cases, regardless of amount, are now handled by the same procedures established under the Demonstration Program. The requirements of section 554 of the APA, and by reference section 556 and section 557, apply to hazardous materials civil penalty cases initiated after September 7, 1988.

Three commenters object that the rule permits the decisionmaker to confer with the prosecutor concerning whether to begin a civil penalty proceeding by issuing a notice of proposed civil penalty. The commenters express concern that any such preliminary discussion could lead to bias or predisposition of a case by the FAA decisionmaker in a particular civil penalty action.

The FAA has carefully balanced the interest of the Administrator to determine whether a case should be initiated and the rights of individuals to impartial adjudication. The Administrator, as the head of an agency empowered to perform critical prosecutorial and adjudicatory functions, must have the discretion to be involved in a preliminary decision to proceed with an enforcement action. Such participation could lead to a decision not to initiate the case. At the same time, the Administrator must function independently of the prosecutor in the event that an appeal is taken from the initial decision of an administrative law judge. As a practical matter, the Administrator performs two fundamentally different functions when participating in a preliminary determination of whether sufficient evidence exists to initiate a case and when reviewing an initial decision on appeal based on evidence contained in the record.

The Administrator lawfully may participate in a decision to bring a case. By its terms, the APA's prescription of separation of functions is not designed to restrict the head of the agency. Section 554(d)(2) states, "[t]his subsection does not apply * * * to the agency or a member or members of the body comprising the agency." The Administrator, as FAA decisionmaker on appeal under the Demonstration

Program, is thus not subject to the separation of functions mandated by the APA. The restrictions instead are directed to the "employee who presides at the reception of evidence" (administrative law judge) and the "employee engaged in the performance of investigative or prosecuting functions" (agency attorney). [5 U.S.C. 554(d).] *See Attorney General's Manual on the Administrative Procedure Act*, at 53–58 (1947).

Although the Administrator is specifically exempted from the APA prescriptions, the FAA elected to separate the prosecutorial and adjudicatory functions, at a very early stage in the proceedings, to ensure the independence and impartiality of the decisionmaker in the event of appellate proceedings under the Demonstration Program. In addition, the rules provide that a final decision and order of the Administrator, issued after appeal, and the basis for that decision, ultimately is subject to judicial scrutiny.

The two court decisions relied on by these commenters are inapposite. Both involved challenges to the exercise of investigative or prosecutorial functions by the *adjudicator*. In *Finer Foods Sale Co. v. Block*, 708 F.2d 774 (D.C. Cir. 1983), the only issue presented was whether the judicial officer's earlier involvement in a reparations order precluded him from deciding a disciplinary case. *Grolier v. FTC*, 615 F.2d 1215 (9th Cir. 1980), concerned whether an attorney-advisor to a member of the Federal Trade Commission could participate as an administrative law judge in a case if he had previously engaged in the performance of investigative or prosecuting functions. Under the Demonstration Program there is no doubt that the FAA adjudicator and decisionmaker are neither engaged in prosecution nor subject to the supervision or direction of one who is.

Initiation of the Hearing Proceeding

Four commenters, including the ABA Administrative Section, object to the procedure of initiating the hearing process with an order of civil penalty rather than a notice of proposed civil penalty. Specifically, the commenters object that when an individual requests a hearing the agency issues an order which asserts findings or determinations of violations rather than allegations. The commenters believe that this procedure shifts, or appears to shift, the burden of proof to the individual charged with the violation.

The assertions in a notice of proposed civil penalty or an order of civil penalty essentially are equivalent to unanswered allegations. In the scheme of the procedural rules, these allegations do not become "findings" until they are admitted, unanswered, or determined after administrative adjudication. Only then do they result in findings that bind the parties. The order of civil penalty sets out the prosecutorial position as a result of an investigation and any informal proceedings. It represents notice of what the agency attorney intends to prove at the hearing and does not shift the burden of proof from the agency to an individual who has received the order. This process is similar to practice before the NTSB where the FAA issues "orders" affecting an individual's certificate before a hearing is held before an NTSB administrative law judge. Section 13.224 clearly states that the agency has the burden of proving the findings asserted in the order. This provision is in compliance with section 556(d) of the APA which provides that "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof."

Further, § 13.208 provides that the order of civil penalty shall serve as the complaint, which begins the hearing process. Because the order serves as the complaint, which is in essence a charging document, there should be no perception that the agency has shifted the burden of proof or that an adjudicatory decisionmaker has prejudged the matter.

Compromise of a Civil Penalty Action

Three commenters express concern regarding the effect of the Demonstration Program on civil penalty compromises.

Formerly, all FAA civil penalty actions were settled by compromise whenever agreement on an acceptable penalty could be reached without institution of suit in a United States district court. Such compromises do not result in a formal adjudication or finding or a violation. This avenue continues to be available for penalties above the $50,000 maximum specified for Demonstration Program cases, and results from the statutory limitation of the Administrator's authority only to "compromise" a penalty in those cases. [49 U.S.C. 1471] Such violations may be adjudicated only by the district court.

In contrast, Congress has expressly authorized the Administrator to "assess" civil penalties in cases under the Demonstration Program "upon written notice and finding of violation." [49 U.S.C. 905] The FAA knows of no evidence that Congress intended that some cases involving penalties of $50,000 or less would be adjudicated under the Demonstration Program (e.g., with a finding of violation) and that others would not. Accordingly, the agency intends to proceed in accordance with the Demonstration Program in all such cases. Alleged violators must, in any event, be treated consistently.

These requirements of the Demonstration Program have no effect on the ability of persons to seek to negotiate reductions in the amounts of proposed penalties or to settle on such amounts at any stage of the proceedings. Nevertheless, since such settlements will result in an order including findings of violations, respondents in some cases may be reluctant to enter into settlements which might have been acceptable to them under the former "compromise" scheme. The FAA is satisfied that Congress considered such factors in choosing to establish an alternative scheme which affords a more expeditious and efficient method for adjudicating civil penalties.

Location of Hearings

One commenter questions the rule's provisions for the selection of the location for a hearing. This commenter suggests that, particularly for those cases in which the alleged violation occurred aboard an aircraft in flight and the alleged violator is a passenger, provision should be made for the hearing to be held near the place of the alleged violator's residence.

The rules provide that both the person requesting the hearing and the agency attorney may suggest a location for the hearing. (14 CFR 13.16(i) and 13.208(b)) Where there is no agreement between the person requesting the hearing and the agency attorney, the docket clerk shall assign a hearing location near the place where the incident occurred. (14 CFR 13.208(c)) If a party is not satisfied with this assignment, he or she may file a motion with the administrative law judge to request a different hearing location or the administrative law judge may, on his or her own motion, change the hearing location. (14 CFR 13.221(c)) The administrative law judge may decide any location for the hearing based on a review of factors that include, but are not limited to, "due regard to where the majority of the witnesses reside or work, the convenience of the parties, and whether the location is served by scheduled air carrier." (14 CFR 13.221(c))

The FAA believes that these procedures give adequate consideration to the needs of the respondents as well as of witnesses who will be involved in these cases. The FAA believes that cases involving an alleged violation

committed by a passenger aboard an aircraft in flight and where there is no agreement between the person requesting the hearing and the agency attorney regarding the location of the hearing, will be rare. In addition, after review of the comment and the provisions of the rule dealing with the location of a hearing, the FAA believes that the current provisions are flexible enough to avoid hardship to either the respondent or the witnesses involved in a particular case.

If either party disagrees with the location of the hearing set by the docket clerk, either party may submit a motion to the administrative law judge to change the location of the hearing. The FAA was aware that an inconvenient location could cause hardship to the parties; thus, the FAA provided that a motion to change the location for a hearing could be submitted as soon as an administrative law judge has been assigned to the proceedings. The FAA anticipates that the location of the hearing, and any disputes regarding the location, will be resolved definitively by the administrative law judge very early in the proceedings.

Discovery

One commenter expresses concern about the discovery process provided in the rules. This commenter criticizes several of the aspects of the discovery scheme, including that it is to be conducted without the consent or approval of the administrative law judge, that all of a respondent's discovery requests must be served on the agency attorney of record with no "companion courtesy" for respondents regarding agency requests, and that the test for what is discoverable is unduly broad.

The FAA, in promulgating these rules, was mindful of the lack of a discovery scheme in the rules of proceeding for enforcement hearings before the NTSB. Because of the absence of a clearly delineated discovery process in the NTSB rules, disputes regarding discovery have often resulted and hearings have been delayed while parties waited for the administrative law judges to resolve the disputes. The agency resolved to avoid similar problems in the implementation of the Demonstration Program.

Each of the discovery rules was designed to give maximum flexibility to the parties and to ensure that discovery could be conducted as broadly as the parties wish without need for frequent actions or rulings by the administrative law judge. That such an objective is necessary can be assumed from the lack of other comments about the discovery rules as promulgated.

The requirement to serve any discovery requests on the agency attorney of record was included because of problems often experienced in this area in NTSB cases. In those cases, respondents have served discovery requests on the technical offices of the agency and the agency attorney on the case remains unaware of the request until a reasonable time in which to answer or object has already passed.

This section of the rules is not intended to imply that the agency attorney will not serve discovery requests on the respondent. Indeed, the FAA practice is, and will remain, that agency attorneys serve counsel for the respondents or the respondents themselves if they are not represented by counsel. The FAA is not aware that any such problem exists with the service of agency discovery requests on respondents.

One commenter indicates that the informal conference procedure used by FAA in all enforcement cases prior to the Demonstration Program and adopted also for the Demonstration Program unfairly gives the FAA an opportunity for discovery at a time when the respondent comes in with "defenses laid down."

It has always been the agency's practice to hold informal conferences off the record and not to use information learned at an informal conference against a respondent. Paragraph 1207(a)(4) of the Enforcement Handbook (FAA Order 2150.3A) provides:

> The informal conference should not be used as a means to gather additional evidence or admissions to prove the charges in the enforcement action. However, any additional information obtained may be used for impeachment purposes if the alleged violator changes his story with regard to a material fact in subsequent proceedings.

On the other hand, if information presented at the informal conference exonerates the respondent from some or all of the alleged infractions, the agency does not continue to press those allegations. The informal proceedings most frequently serve to benefit a respondent in that allegations which are disproved or refuted during informal proceedings are dropped. In addition, there is no provision in the rules of practice that requires a respondent to participate in informal proceedings or to request and to attend an informal conference. Given this experience regarding the normal way in which the informal conference process works, the FAA does not believe there is a need to revise the rule.

Evidentiary Matters

Several commenters express concern that the standard for admissibility of evidence of § 13.222 is unduly broad. Of particular concern to commenters representing air carriers and operators of large transport category aircraft is the apparent admissibility of cockpit voice recorder (CVR) and flight data recorder (FDR) information.

These commenters argue that such evidence is inadmissible in FAA enforcement actions by regulation, statute or case law and that the rules of procedure for the Demonstration Program cannot, and should not attempt to, effect a change in the admissibility of such evidence in these cases. Each of these commenters points to § 121.359 and § 135.151, which provide that cockpit voice recorder information is not used by the Administrator in any civil penalty or certificate action. They argue that § 13.222 should be amended to specifically exclude CVR and FDR data in actions brought under the Demonstration Program.

With respect to use of the CVR and FDR data, the revisions to Part 13 of the FAR were not intended to impliedly amend either Part 121 or Part 135. Nor was it the intent of the FAA, in the promulgation of the rules of practice for civil penalty actions, to change any existing regulations, policies or practices with regard to the use of information obtained from either cockpit voice recorders or flight data recorders. The agency will continue to operate under existing rules, policies and practices in the handling of information from the cockpit voice and flight data recorders. It is not necessary to amend § 13.222 merely to reflect that it does not alter existing authority and practice.

Two commenters express dissatisfaction that § 13.222(c) makes hearsay evidence admissible in hearings conducted under the rules. Both commenters acknowledge, however, that the admission of hearsay evidence is a longstanding, accepted practice in administrative hearings. One of these commenters expresses difficulty in understanding why Congress would have mandated the application of the Federal Rules of Evidence to hearings before the National Labor Relations Board, under the Labor Management Relations Act of 1947, and yet not give the same protection to parties to FAA administrative hearings. Another indicates that, unlike the general rule of admissibility of hearsay in other administrative forums, this rule removes the discretion of the administrative law judge to exclude hearsay evidence. This,

the commenter argues, eliminates fairness from the proceeding.

The legislation which establishes the Demonstration Program requires that civil penalties under this authority be assessed only after notice and an opportunity for a hearing on the record, in accordance with section 554 of the APA. There is no requirement, either in the legislation or the APA, to conduct these hearings in accordance with the Federal Rules of Evidence. As the commenters acknowledge, the admission of hearsay in administrative hearings is a generally well-known and long-standing procedure.

Further, the fact that hearsay evidence is admissible, regardless of other considerations, does not remove the discretion of the administrative law judge. Section 13.222(c) provides that the hearsay character of the evidence goes only to the weight to be accorded that evidence. Thus, the administrative law judge retains significant discretion regarding the treatment of hearsay evidence and fairness is not compromised by this clear statement of the treatment which will be given to hearsay evidence.

Participation by Persons Other Than the Parties

One commenter states that § 13.206, the intervention section, is unnecessarily restrictive and should be amended to give the administrative law judge the discretion to allow intervention where it will serve the ends of justice. The commenter believes that allowing intervention would allow individuals and interested groups an opportunity to be heard before a penalty is assessed binding them, affecting their property or financial interests, or otherwise significantly affecting them.

The FAA believes that intervention at the hearing stage of the proceedings generally does not contribute to resolution of the issues at the hearing and may unnecessarily delay the hearing. The issues to be decided at a hearing will be factual determinations of whether a party violated distinct Federal Aviation Regulations or Hazardous Materials Regulations. In the vast majority of cases, a determination of whether an individual violated a regulation affects only the parties to an individual case. Participation by others in the fact finding hearing stage of the proceedings would not contribute significantly to the resolution of the issues before the administrative law judge. In addition, when an order of civil penalty is affirmed, modified, or reversed by the administrative law judge, that order is binding only on the parties to the hearing and would directly affect only their financial or property interests. Nevertheless, § 13.233(f) provides that the FAA decisionmaker may allow *amicus curiae* briefs in the appeal of an initial decision. This should provide a sufficient opportunity for any persons who have a substantial interest, not sufficiently represented by the parties, with a direct interest in the proceeding, to participate in the enforcement process.

Argument Before the Administrative Law Judge

The ABA Administrative Section objects to § 13.231 which states that "[o]nly in a clearly complex or unusual case, the administrative law judge may request or the parties may agree to file written arguments with the administrative law judge." The commenter believes that it is not reasonable to prohibit parties from supporting their positions by means of written presentations and that due process and effective representation require it.

The parties are not prohibited from filing written arguments. Rather, if the parties or the administrative law judge believe that the case is complex or unusual, the parties may agree to submit or the administrative law judge may request written arguments. The FAA believes that the majority of the cases before the administrative law judges will involve simple issues, not requiring written arguments for their disposition. Delaying the proceedings to prepare written arguments on issues that could be sufficiently developed orally at the hearing is unnecessary. Written argument or written posthearing briefs may be filed if the parties agree to take on the extra burden of preparing and submitting written briefs or if the administrative law judge requests written briefs to address complex or unusual issues in a particular case.

Initial Decisions by the Administrative Law Judge

One commenter expresses concern that requiring oral decisions, except in complex or unusual cases, is not conducive to a thoughtful, well-reasoned, and fair decision. Section 13.231 allows the administrative law judge in a complex or unusual case to issue a written decision. If the administrative law judge determines that a case involves complex or unusual issues, or if the parties agree that the issues are complex or unusual, then the administrative law judge may issue a written decision. The FAA believes that the majority of cases and issues before the administrative law judges in Demonstration Program cases will be uncomplicated, fact determinations, not requiring the added time and expense of preparing a written decision for their disposition. The DOT administrative law judges are familiar with the requirements imposed by the APA for initial decisions. Therefore, the FAA believes that decisions issued by the administrative law judges, whether they are oral or written, will be thoughtful, well-reasoned, and fair.

The ABA Administrative Section expresses concern that the record would not be complete when the administrative law judge issued an oral initial decision, rather than a written initial decision. The FAA is undertaking steps to assure that oral initial decisions are transcribed and that those transcripts are made a part of the record.

Setting an Appropriate Sanction

Five commenters express concern over the manner in which civil penalties are assessed. Specifically, three commenters question whether the administrative law judge has the authority to reduce a proposed sanction. Two commenters argue that the amount of a proposed civil penalty should not be given deference. One commenter suggests that the final rule be amended to include the factors listed in § 13.16 (applicable to violations of the Hazardous Materials Transportation Act) when determining the appropriate amount of civil penalty for violations of the FAR. The ABA Administrative Section asserts that section 901(a)(1) of the FAAct [49 U.S.C. 1471(a)(1)] "mandates that the FAA take into account several factors in determining the amount of civil penalty."

Congress, in enacting the FAAct, established a comprehensive scheme for the regulation and promotion of civil aviation in order to foster its development and provide for the safe and efficient use of airspace by both civil and military aircraft. Pursuant to the FAAct, the FAA has promulgated regulations which are "designed to enhance the safety of civil aeronautics." *FAA* v. *Landy*, 705 F.2d 624, 628 (2d Cir.), *cert. denied*, 104 S.Ct. 243 (1983).

Upon examination of the evolution of section 901(a)(1), it is clear that the criteria listed therein for determining the appropriate amount of civil penalty apply only to violations which relate to the transportation of hazardous materials. Specifically, in 1975, Congress amended section 901(a)(1) by:

(1) inserting immediately before the period at the end of the first sentence thereof and inserting in lieu thereof: "*except that the amount of such civil penalty shall not exceed*

$10,000 for each such violation which relates to the transportation of hazardous materials"; and

(2) deleting in the second sentence thereof "Provided, that this" and inserting in lieu thereof the following: "The amount of *any such civil penalty which relates to the transportation of hazardous materials* shall be assessed by the Secretary, or his delegate, upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. *In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.* [Emphasis added.]

The FAA believes that Congress did not disturb the FAA's policy prerogatives to choose sanctions based on its determination as to what sanction is required in the interest of safety for a particular type of violation given the FAA's technical assessment of the seriousness of that type of violation, and of other relevant factors affecting safety.

Notwithstanding that Congress limited the conforming amendments to section 901(a)(1) to violations involving the transportation of hazardous materials, the FAA, as a matter of policy, determined that guidance regarding the selection of an appropriate sanction for violations of Title VI and any rule, regulation, or order issued thereunder should be developed. This policy is contained in paragraphs 204 and 207 of the Enforcement Handbook (FAA Order 2150.3A), and in the Enforcement Sanction Guidance Table, Appendix 4 to FAA Order 2150.3A.

In view of the foregoing, the FAA iterates its position, set forth in the preamble to the final rule, that the FAA's determination of a civil penalty should be given deference in order to ensure a deterrent sufficient to encourage compliance.

Moreover, the FAA believes that affording such deference, when coupled with the policy guidance regarding the selection of an appropriate sanction, is neither inconsistent with § 13.232(a) nor undercuts the authority of the administrative law judges. Rather, it provides the administrative law judges with the appropriate standards to exercise their role of reviewing the FAA's sanction decision under § 13.232(a).

Exhaustion of Administrative Remedies

One commenter objects to § 13.16(n), which states in pertinent part, "[a]n order or an initial decision of an administrative law judge, that has not been appealed to the FAA decisionmaker, does not constitute a final order of the Administrator for the purposes of judicial review * * *." Thus, in order to obtain judicial review of a civil penalty assessed under the Demonstration Program, a party must first appeal the initial decision of the administrative law judge to the FAA decisionmaker. This commenter believes this provision violates section 557(b) of the APA, which provides, in pertinent part, "[w]hen the presiding employee [administrative law judge] makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule." The commenter believes this provision allows a person to obtain judicial review directly from an initial decision of the administrative law judge.

This commenter misreads the Administrative Procedure Act. Section 557(b) must be read in conjunction with section 704 of the APA. That section provides in relevant part:

> [A]gency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsiderations, or, *unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.* [Emphasis added.]

The *Attorney General's Manual on the Administrative Procedure Act,* in discussing section 557(b), states that "[i]t is important to note that section [704] permits an agency to require parties to appeal from hearing officers' initial decisions to the agency as a prerequisite to obtaining judicial review." *See Attorney General's Manual on the Administrative Procedure Act,* at 83 n.4 (1947). The Manual, at 103, states simply that this provision "embodies the doctrine of exhaustion of administrative remedies."

FAA has complied with section 704 in providing expressly that, "[i]f a party files a notice of appeal pursuant to the procedures in Subpart G, the effectiveness of any order assessing civil penalty is stayed until a final decision and order of the Administrator has been entered on the record." (14 CFR 13.16(m))

"Stale Complaints"

Four commenters express concern that the FAA, by failing to limit the time in which the agency may commence civil penalty action, may prejudice a respondent's ability to prepare a defense. Two of these commenters believed that the final rule should contain a provision similar to the NTSB's stale complaint rule found in 49 CFR 821.33.

Neither the FAAct nor the Hazardous Materials Transportation Act (HMTA) prescribes stale complaint or statute of limitations requirements for commencing civil penalty actions. However, 28 U.S.C. 2462 provides a five-year statute of limitations for filing an action to enforce a civil fine or penalty. Section 2462 provides:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made therein.

Congress, by failing expressly to provide stale complaint or statute of limitations requirements in the FAAct and HMTA, intended that the five-year statute of limitations set forth in section 2462 be applicable.

As previously noted, § 821.33 of the NTSB's rules provides for dismissal of "allegations of offenses which occurred more than 6 months prior" to the notice of proposed action under section 609(a) of the FAAct, unless the Administrator establishes that "good cause existed for the delay, or that imposition of a sanction is warranted in the public interest, notwithstanding the delay * * *."

Notwithstanding that the enabling statute does not provide for such a limitation, the Board, as a matter of policy, decided that a 6-month delay in commencing a certificate action is *prima facie* evidence of staleness. Furthermore, the Board has given this policy the full force and effect of law by promulgating § 821.33. The FAA, on the other hand, has not made a similar policy determination. Furthermore, the FAA, in carrying out the responsibilities to enforce the FAAct and HMTA through the commencement of civil penalty actions under the Demonstration Program is not bound by the Board's policy determinations or regulations. "The delegation of power to administer a statute carries with it the power to adopt such procedures as are necessary or proper in carrying out its administrative tasks." B. Schwartz, *Administrative Law,* at 153 (1976).

In conclusion, the sole time constraint imposed on FAA action is the statute of limitations contained in 28 U.S.C. 2462. The FAA has determined that imposition of a further limitations period, through promulgation of a stale

complaint rule, is not necessary to carry out its enforcement responsibilities.

FAA Rules Implementing the Equal Access to Justice Act

Four commenters note that the final rule does not provide procedures governing the award of attorney fees and other expenses under the Equal Access to Justice Act (EAJA). Several of these commenters express concern that the final rule's failure to address this issue may preclude recovery under the EAJA.

The FAA believes that procedures governing the application and award of attorney fees and other expense should not be included in the final rule promulgating procedural rules to govern on-the-record hearings. Rather, FAA believes that such procedures should be promulgated in a separate rule. Accordingly, the FAA is undertaking a rulemaking project to prescribe procedures governing EAJA awards.

Issued in Washington, DC, on March 17, 1989.

Gregory S. Walden,

Chief Counsel.

[FR Doc. 89-6668 Filed 3-17-89; 2:10 pm]

BILLING CODE 4910-13-M

federal register

Wednesday
March 22, 1989

Part IV

Environmental Protection Agency

40 CFR Part 152
Pesticide Registration Fees; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[OPP-36101C; FRL-3541-1]

Pesticide Registration Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Effective immediately, EPA is amending the existing pesticide registration fee rule (promulgated, as Subpart U of 40 CFR part 152, at 53 FR 19108, May 26, 1988). The rule as amended will state that no fees will be collected under the rule during the period beginning on October 25, 1988, and ending on September 30, 1997. The newly enacted "Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1988" prohibit EPA from imposing pesticide registration fees under that rule during that period. EPA is issuing this final rule without notice and opportunity for public comment and making it immediately effective, because there is "good cause" to do so within the meaning of the Administrative Procedure Act, 5 U.S.C. 553.

DATE: This rule becomes effective March 22, 1989.

FOR FURTHER INFORMATION CONTACT:

Ferial S. Bishop, Chief, Registration Support Branch, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716G, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7700).

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued in the **Federal Register** of May 26, 1988 (53 FR 19108), a final rule establishing fees for certain registration activities performed on or after June 27, 1988, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The rule is codified as Subpart U of 40 CFR Part 152, and as a part of 40 CFR Part 172. In that rule, EPA prescribed fees for various registration reviews associated with applications for new or amended registration and for experimental use permits.

On October 25, 1988, President Reagan signed into law the "Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1988" (Pub. L. No. 100-532). Among other things, these amendments prescribe certain fees and provide that during the period beginning on the date of enactment of the amendments (October 25, 1988) and ending on September 30, 1997, EPA may not levy any other fee for the registration of a pesticide under FIFRA except for the fees specifically prescribed by the amendments. Accordingly, EPA today is amending the existing pesticide registration fee rule to provide that no fees will be levied under it with respect to applications filed during that period.

EPA has determined that notice and comment on this amendment to the fee rule is not required. A provision of the Administrative Procedure Act specifically recognizes situations where an administrative agency need not provide an opportunity for public comment before issuing a final substantive rule. Under 5 U.S.C. 553(b)(3)(B), a rule is exempt from notice and public comment requirements "when the agency for a good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the pubic interest."

The Administrative Conference of the United States (ACUS), in its Recommendation 83-2: The "Good Cause" Exemption from APA Rulemaking Requirements, 1 CFR 305.83-2, summarized the case law that has developed on the use of the "good cause" exemption. It says that situations in which use of the exemption is appropriate include:

> [T]hose in which * * * delay in promulgation will cause an injurious inconsistency between an agency rule and a newly enacted statute or judicial decision.

It is obvious that public comment could not change the result dictated by the statute. It is equally obvious that EPA must refund any fee that has been submitted with any registration application first received by EPA on or after October 25, 1988. Delay by EPA in announcing this conclusion could result in added expenses to applicants (in the form of processing costs and lost interest) and to EPA (in the form of the cost of processing refunds), since not all applicants may be aware of the effect of the 1988 FIFRA amendments. Therefore, EPA has concluded that notice and comment on this rule would be impracticable, unnecessary, and contrary to the public interest, within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reasons, EPA believes that there is good cause to make today's rule immediately effective, instead of effective within 30 days, within the meaning of 5 U.S.C. 553(d)(3).

All fees the receipt of which were recorded by EPA's Financial Management Division (FMD) on or after October 25, 1988, will be refunded. Conversely, EPA will retain any fee the receipt of which was recorded by FMD prior to October 25, 1988, except for those cases in which Subpart U provided for refunds. Accordingly, applicants who withdraw their applications before significant scientific review of the application has begun will receive a refund of the registration fee, less the Agency's administrative review charge of $1,200. Fees submitted for applications determined by EPA to be incomplete in accordance with Subpart U will be refunded, less $1,200 for administrative review costs.

Waiver request fees the receipt of which were recorded by FMD before October 25, 1988, will be treated as follows. First, if an application met the Subpart U criteria for a full waiver (minor use, public interest, or Agency-initiated actions), the entire waiver requests fee of $1,200 (or the actual registration fee of $700 in the case of a label amendment) will be refunded. Second, if an application met the criteria for a partial waiver (severe economic impact), the waiver review fee will not be refunded, but no additional payment which otherwise might be due under Subpart U will be required from the applicant. (Note, however, that if EPA determines that payment of the $700 fee for an application involving a label amendment would cause a severe economic impact on the applicant, the Agency will refund the entire fee of $700). Third, if a fee waiver was requested but subsequently was denied by the Agency, the $1,200 waiver request fee will not be refunded. Finally, if an application is withdrawn by an applicant, the associated waiver request fee will not be refunded, but will be treated as an administrative review charge. Refunds of payments will not, of course, have any adverse effect on the applicant's right to have the application processed by EPA.

In addition to fees for "registration" of pesticides, Subpart U prescribed fees for the issuance of experimental use permits (EUPs) under FIFRA section 5. Although this fee, strictly speaking, was not affected by the 1988 amendments, EPA believes that maintaining an active mechanism to collect only the relatively small fees prescribed for EUP applications would not be cost-effective. Accordingly, the Subpart U fees for EUP applications will be treated in the same manner as the fees for registration applications.

Finally, the authority citation for Part 152 is being corrected to reflect the fact (already stated in the rule itself) that the Subpart U sections are authorized by 31 U.S.C. 9701.

II. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291 EPA is required to judge whether or not a rule is "major" and therefore subject to the requirement for a Regulatory Impact Analysis. The Agency has determined that this rule is not major because it does not meet any of the criteria set forth and defined in section 1(b) of the Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires each Federal agency to prepare a Regulatory Flexibility Analysis (RFA) when it promulgates a final rule (5 U.S.C. 604). The purpose of the RFA is to describe the effects the regulation will have on small entities and examine alternatives that may reduce these effects. As indicated earlier, the purpose of this rule is to notify the regulated community of the impact of the 1988 FIFRA amendments on EPA's pesticide registration fee rule. It has been determined that the rule will have no significant adverse economic impact on small entities.

C. Paperwork Reduction Act

As this rule contains no information collection requirements, the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. are inapplicable.

List of Subjects in 40 CFR Part 152

Administrative practice and procedure, Fees, Intergovernmental relations, Labeling, Pesticides and pests, Reporting and recordkeeping requirements, Research.

March 9, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR Part 152 is amended as follows:

PART 152—[AMENDED]

a. The authority citation for Part 152 is revised to read as follows:

Authority: 7 U.S.C. 136–136y; Subpart U is also issued under 31 U.S.C. 9701.

b. A new § 152.401 is added, to read as follows:

§ 152.401 Inapplicability of fee provisions to applications filed prior to October 1, 1997.

No fee required by this Subpart U shall be levied with respect to any application filed during the period beginning on October 25, 1988, and ending on September 30, 1997. See FIFRA section 4(i)(7) (added to FIFRA by Pub. L. 100–532, October 25, 1988, 102 Stat. 2654).

[FR Doc. 89–6707 Filed 3–21–89; 8:45 am]

BILLING CODE 6560–50–M

Federal Register

Wednesday
March 22, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Special Flight Rules in the Vicinity of the Grand Canyon National Park; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; SFAR No. 50-2]

RIN 2120-AC70

Special Flight Rules in the Vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, DOT.

ACTION: Final rule.

SUMMARY: In May 1988, the FAA issued a final rule for the operation of aircraft in the airspace above the Grand Canyon up to an altitude of 14,500 feet above mean sea level (MSL), with an effective date of September 22, 1988. The regulations were adopted to comply with recent legislation requiring additional flight regulations based on the recommendations of the U.S. Department of the Interior. The FAA requested comments on the final rule at the time it was published. This action establishes a corridor into the airport on the Hualapai Indian Reservation and simplifies the configuration of a flight corridor in the vicinity of Dragon Butte in the central canyon.

DATES: *Effective date:* April 6, 1989.

Expiration date: Special Federal Aviation Regulation No. 50-2 expires on June 15, 1992.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION: .

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, APA-200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3479. Communications must identify the special rule number of the document.

Background

On May 27, 1988, the FAA issued SFAR 50-2 (53 FR 20264, June 2, 1988), a special federal aviation regulation revising prior flight regulations in the vicinity of the Grand Canyon National Park. SFAR 50-2 substantially adopted the recommendations of the Secretary of the Interior, submitted to the FAA in accordance with section 3 of Pub. L. 100-91.

In summary, SFAR 50-2: (1) Establishes a Special Flight Rules Area from the surface to but not including 14,500 feet MSI in the area of the Grand Canyon; (2) prohibits flights below a certain altitude in each of five sectors of this area, with certain exceptions; (3) establishes flight-free zones from the surface to 14,500 feet MSL above large areas of the Park; (4) provides for routes for commercial tour operators and transient operators through the canyon area; and (5) retains local requirements for terrain avoidance and communications established by SFAR 50-1.

When SFAR 50-2 was published, the FAA requested comments on the final rule to provide interested persons an additional opportunity to comment on the details of the rule adopted.

Comments on SFAR 50-2

Five comments were received on SFAR 50-2 during the comment period. Commercial helicopter operators requested that the effective date of the rule be delayed from September 22 to a date in November 1988. The reason given was that air route tour traffic does not drop off significantly from peak summer levels until November. The commenters stated that it would be difficult for tour pilots to train for and transition to a new route structure in the course of high-volume tour operations.

Upon consideration of the comments, the FAA extended the compliance date of SFAR 50-2 for the tour operators until November 1, 1988, in order for the operators to permit their pilots additional time to train on the new routes in a less congested operating environment. The extension was published in the **Federal Register** on September 22, 1988 (53 FR 36946).

Helicopter operators also requested clarification of the altitudes in the Dragon Corridor. In the preamble to the final rule, the FAA noted that helicopters would be assigned the altitude of 7,500 feet MSL in the Dragon Corridor, for both northbound and southbound operations, and that fixed-wing aircraft would enter the corridor from the north at 8,500 feet MSL. The helicopter operators requested specific clarification that fixed-wing operators would not be permitted to descend below 8,500 feet MSL in the corridor.

Fixed-wing air tour operations in the Dragon Corridor will be maintained at an altitude of 8,500 feet MSL, in accordance with restrictions in the operations specifications of the affected operators. Accordingly, no clarification in the regulatory language is necessary.

One helicopter operator commented that the regulated airspace extended far beyond the boundaries of the Grand Canyon National Park, and that the regulation was not required or authorized by Pub. L. 100-91 to that extent. Section 3 of Pub. L. 100-91 refers to the Grand Canyon, rather than Grand Canyon National Park, and the FAA continues to interpret the legislation as authorizing restrictions in areas reasonably necessary to reduce noise impacts on the canyon. In some areas the Special Flight Rules Area (SFRA) boundaries are several miles from the canyon rim, primarily as a result of an effort to simplify the boundary lines and align them with local navigation aids. Operations are not unnecessarily restricted in these areas, however.

The Forest Service of the Department of Agriculture commented that FAA had disregarded its previous comment, filed in March 1988, objecting to the northern boundary of the SFRA. The Forest Service renewed its objection, on the basis that the SFRA restricted operations by the Forest Service and its contractors over lands administered by the Forest Service. The FAA agrees that the Forest Service should have unrestricted air access to all of the lands under its administration. This can be accomplished by authorization from the Las Vegas Flight Standards District Office. The FAA does not agree that it is necessary to amend the northern boundary of the SFRA, however.

One commenter expressed several environmentally oriented concerns about specific provisions of SFAR 50-2. First, while the FAA expressed an intent to afford some protection for Point Imperial, the final rule did not restrict the airspace at that location. The Department of the Interior (DOI), in its recommendations to the FAA, requested a large flight-free zone extending across the canyon north of the North Rim Overlook, but did not recommend a flight-free zone around Point Imperial. With the establishment of the Bright Angel Flight-Free Zone in SFAR 50-2, some air traffic will necessarily be diverted across the Kaibab Plateau. However, the FAA has established tour routes that avoid Point Imperial within a radius of at least one mile.

This commenter further requested that the overall number of tour flights over the Grand Canyon be limited. A reduction in the number of flights would be a complex regulatory undertaking, since flights would need to be regulated from all possible originating airports, and a legally sufficient allocation mechanism would be required for the flights permitted. The benefit to a reduction in flights, in terms of the actual degree of noise reduction which might result, is unknown. For these

reasons, the FAA has not adopted a limitation on flights.

The same commenter requested that high-level jet routes be relocated away from the Grand Canyon National Park. The FAA will consider the relocation of jet routes following the 2-year study of aircraft overflight of the park now being undertaken by the National Park Service.

The commenter also requested that the Dragon Corridor be relocated to the west to avoid aircraft noise impacts on the Boucher Trail, Hermit Trail, and Tonto Trail. Alternatively, the commenter recommended that the corridor be closed for part of the year or that traffic levels be restricted in the corridor.

SFAR 50–2 established the Dragon Corridor in the location recommended by DOI, with minor changes to the configuration of the corridor for air navigation purposes. Under the provisions of Pub. L. 100–91, the FAA could not place the corridor in a location different than that recommended by DOI for reasons other than aviation safety, including environmental reasons. Limitations on the use of the corridor were not recommended by DOI, and the FAA does not believe that the imposition of additional restrictions are warranted prior to completion of the 2-year study mandated by Pub. L. 100–91.

However, the National Park Service has requested that the 4-mile-wide corridor at 10,500 feet MSL and above be altered to coincide with the alignment of the lower, 2-mile-wide portion of the corridor between Dragon Butte and Cocopa Point. The original alignment of the upper portion is on a radial off the Page Very High Frequency Omni Range (VOR), to assist transient pilots in navigation through the area. In September 1988, an FAA flight check indicated that the Page VOR signal could not be received below 12,500 feet MSL in the corridor. Because the VOR signal cannot be received in a substantial part of the upper corridor, the FAA believes there is no reason to continue the separate alignments of the upper and lower portions of the corridor. Accordingly, the agency is simplifying the entire corridor to align both the upper and lower portions between the Dragon Butte and Cocopa Point. The width of the corridor at 10,500 feet MSL and above will remain 4 nautical miles.

After the close of the comment period, the Truxton Canyon Agency of the Bureau of Indian Affairs, U.S. Department of the Interior, submitted comments on behalf of the Hualapai Indian Tribe. The Hualapai reservation occupies extensive lands south of the Colorado River adjacent to the Grand Canyon National Park, and the reservation is partly within the SFRA.

The Hualapai Tribe has established a landing strip on the reservation in the west canyon area, on a plateau south of the canyon rim. The current status of the landing strip is private use, although it is the tribe's intention that the airport eventually be accessible to transient pilots to fly in for shopping and tours of the reservation. Because the airport is located in the special flight rules area, and below the minimum flight altitude for the western sector of the SFRA, transient pilots cannot use the airport without special authorization in writing from the FAA Flight Standards District Office. The tribe has complained that this unacceptably restricts public access to the reservation and interferes with the tribe's economic development plans.

Operations in and out of the Hualapai Reservation airport would have no noise or other environmental impacts on the Grand Canyon National Park or on any noise-sensitive areas of the Grand Canyon. The tribe's request to modify the SFRA to permit unrestricted public access to the airport is supported by the National Park Service as well as the Bureau of Indian Affairs. Accordingly, the FAA is revising the southern boundary of the SFRA in the west canyon area to establish a corridor to the Hualapai Reservation airport. Access to the airport will be from the south, and operations at the airport will not be permitted to cross the canyon rim.

Amendment to SFAR 50–2

In consideration of the comments received in response to the request for comments contained in SFAR 50–2, the FAA is adopting an amendment to Special Federal Aviation Regulation (SFAR) 50–2 to:

1. Revise the boundary of the SFRA to provide a corridor for unrestricted access to the airport on the Hualapai Reservation, located south of the canyon rim in the west canyon area.

2. Revise the configuration of the Dragon Corridor to center the upper portion, beginning at 10,500 feet MSL, on the centerline of the lower portion.

This rule is effective less than 30 days after publication in the **Federal Register**, because it relieves a restriction contained in the earlier rule and because an effective date coincident with the effective date of the new Las Vegas Sectional Aeronautical Chart will promote safety.

Environmental Review

An environmental assessment of SFAR 50–2 and Finding of No Significant Impact have been placed in the rules docket. This amendment does not alter the conclusions in that document.

Economic Evaluation

Because the economic impact of this amendment is so minimal, a regulatory evaluation is unnecessary. For the same reason, the FAA certifies that the amendment will not have a significant effect on a substantial number of small entities.

For the reasons set forth above, the FAA has determined that this proposed amendment (1) is not a major rule under Executive Order 12291, and (2) is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Parts 91 and 135

Aircraft, Aviation safety, Air taxi and commercial operators, Grand Canyon.

The Amendment Adopted

For the reasons set out above, the Federal Aviation Administration is amending Part 91 and Part 135 of the Federal Aviation Regulations, 14 CFR Parts 91 and 135, by revising Special Federal Aviation Regulation No. 50–2 as follows:

PARTS 91 AND 135—[AMENDED]

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421, 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

3. SFAR 50–2 is amended by revising section 1 and (b) and (c) of section 4 to

read as follows (section 4 introductory text is republished):

Special Federal Aviation Regulation No. 50–2

Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

Section 1. *Applicability.* This rule prescribes special operating rules for all persons operating aircraft in the following airspace, designated as the Grand Canyon National Park Special Flight Rules Area:

That airspace extending upward from the surface up to but not including 14,500 feet MSL within an area bounded by a line beginning at lat. 36°09'30" N., long. 114°03'00" W.; northeast to lat. 36°14'00" N., long. 113°09'50" W.; thence northeast along the boundary of the Grand Canyon National Park to 36°22'55" N., long. 112°52'00" W.; to lat. 36°30'30" N., long. 112°36'15" W. to lat. 36°21'30" N., long. 112°00'00" W. to lat. 36°35'30" N., long. 111°53'10" W., to lat. 36°53'00" N., long. 111°36'45" W. to lat. 36°53'00" N., long. 111°33'00" W.; to lat. 36°19'00" N., long. 111°50'50" W.; to lat. 36°17'00" N., long. 111°42'00" W.; to lat. 35°59'30" N., long. 111°42'00" W.; to lat. 35°57'30" N., long. 112°03'55" W.; thence counterclockwise via the 5 statute mile radius of the Grand Canyon Airport airport reference point (lat. 35°57'09" N., long. 112°08'47" W.) to lat. 35°57'30" N., long. 112°14'00" W.; to lat. 35°57'30" N., long. 113°11'00" W.; to lat. 35°42'30" N., long. 113°11'00" W.; to 35°38'30" N.; long. 113°27'30" W.; thence counterclockwise via the 5 statute mile radius of the Peach Springs VORTAC to lat. 35°41'20" N., long. 113°36'00" W.; to lat. 35°55'25" N., long. 113°49'10" W.; to lat. 35°57'45" N., 113°45'20" W.; thence northwest along the park boundary to lat. 36°02'20" N., long. 113°50'15" W.; to 36°00'10" N., long. 113°53'45" W.; thence to the point of beginning.

* * * * *

Section 4. *Flight-free zones.* Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in section 3(b), no person may operate an aircraft in the Special Flight Rules Area within the following areas:

* * * * *

(b) *Bright Angel Flight-Free Zone.* Within an area bounded by a line beginning at Lat. 35°59'30" N., Long. 111°55'30" W.; to Lat. 35°59'30" N., Long. 112°04'00" W.; thence counterclockwise via the 5-statute-mile radius of the Grand Canyon Airport point (Lat. 35°57'09" N., Long. 112°08'47" W.) to Lat. 36°01'30" N., Long. 112°11'00" W.; to Lat. 36°06'15" N., Long. 112°12'50" W.; to Lat. 36°14'40" N., Long. 112°08'50" W.; to Lat. 36°14'40" N., Long. 111°57'30" W.; to Lat. 36°12'30" N., Long. 111°53'50" W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL within 1 mile of the eastern boundary between the southern boundary and Lat. 36°04'50" N. or the airspace at and above 10,500 feet MSL within 2 miles of the northwest boundary. The area bounded by the Bright Angel and Shinumo Flight-Free Zones is designated the "Dragon Corridor."

(c) *Shinumo Flight-Free Zone.* Within an area bounded by a line beginning at Lat. 36°04'00" N., Long. 112°16'40" W.; northwest along the park boundary to a point at Lat. 36°11'45" N., Long. 112°32'15" W.; to Lat. 36°21'15" N., Long. 112°20'20" W.; east along the park boundary to Lat. 36°21'15" N., Long. 112°13'55" W.; to Lat. 36°14'40" N., Long. 112°11'25" W.; to the point of origin. The area between the Thunder River/Toroweap and Shinumo Flight Free Zones is designated the "Fossil Canyon Corridor."

* * * * *

(Authority: 49 U.S.C. 1303, 1348, 1354(a), 1421, and 1422; 16 U.S.C. 228g; Pub.L. 100–91, August 18, 1987; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Issued in Washington, DC on March 17, 1989.

Robert E. Whittington,

Acting Administrator.

[FR Doc. 89–6669 Filed 3–21–89; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
March 22, 1989

Part VI

Department of Transportation

Coast Guard

46 CFR Parts 401, 403, and 404

Great Lakes Pilotage; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 401, 403, and 404

[CGD 88-111]

RIN 2115-AD19

Great Lakes Pilotage

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the Great Lakes Pilotage Regulations. The Secretary of Transportation approved the Great Lakes Pilotage Study Final Report, which contains recommendations to improve the Great Lakes Pilotage System. Some of the recommendations call for amendments to the Great Lakes Pilotage Regulations. This proposal would implement those recommendations by: (1) Requiring that an unqualified annual audit be submitted by each authorized pilot organization, performed in accordance with Generally Accepted Auditing Standards promulgated by the American Institute of Certified Public Accountants, (2) establishing general guidelines and procedures for ratemaking, (3) requiring that the costs of all support services directly related to the provision of pilotage that pilots require vessels to utilize be included in the rate base, (4) requiring each pilotage pool to certify whether any support service entity is related by beneficial ownership to a pilot, (5) clarifying the regulations to indicate that financial penalties can be applied to pilots as well as vessel operators who are in violation, (6) amending the steps that are to be followed when a pilot is not available within a reasonable period of time, and (7) amending the rate schedule by adding a charge to compensate a registered pilot for "dead heading" across Lake Erie when aboard a vessel whose master uses a "B Certificate" in lieu of the pilot. These changes are proposed in order to increase the efficiency and effectiveness of the Great Lakes Pilotage System.

DATES: Comments must be received on or before May 22, 1989.

ADDRESSES: Comments should be submitted to: The Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 88-111) U.S. Coast Guard, Washington, DC 20593-0001. Between 8:00 a.m. and 3:00 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-LRA-2), Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Merchant Vessel Personnel Division (G-MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, (202) 267-0217.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Written comments should include the docket number (CGD 88-111), the name and address of the person submitting the comments, and the specific section of the proposal to which each comment is addressed. Persons desiring acknowledgement that their comment has been received should enclose a stamped, self addressed postcard or envelope. All comments received will be considered before final action is taken on this proposal. No public hearings are planned, but they may be held if requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this rule are: Mr. John J. Hartke, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Commander Gerald A. Gallion, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulations

Periodically, the U.S. Government has reviewed the operation of the Great Lakes pilotage system. The Department of Transportation completed a study of Great Lakes Pilotage in December 1988. Since the last review in 1972, there has been a significant change in the amount of traffic using the system, the size of ships and the composition of their crews, and the type of communication and safety equipment that ships carry. The purpose of this 1988 study was to reexamine the issues addressed in the 1972 study of Great Lakes pilotage and to determine what modifications to the system would be necessary or desirable at this time.

The study was conducted by a working group led by the Coast Guard and included personnel from the Department of Transportation's Office of Policy and International Affairs, DOT General Counsel, the St. Lawrence Seaway Development Corporation, the Maritime Administration, and the State Department.

A public meeting was held in Cleveland, Ohio, during June 1987 at the beginning of the review. Members of the team visited all three pilot organizations and accompanied registered pilots on vessel transits. Other interested parties were also visited, including the U.S. Great Lakes Shipping Association, the Shipping Federation of Canada, the International Association of Great Lakes Ports, several State Government representatives, and several state pilot associations. On March 14, 1988, the Department of Transportation released a draft report of the Great Lakes Pilotage Study for public comment. Seventy written comments were received. The final report of the study includes a number of recommendations, some of which require regulatory initiatives. The following recommendations are addressed in this proposal.

Current regulations require independent audited financial statements from each authorized pilot pool. The current practice of two of the pilot organizations is to obtain unqualified audit reports from independent certified public accountants. The other organization, by contrast, submits a compilation report, consisting solely of financial information supplied by the pilot association management to an outside accountant for presentation to the Coast Guard. That type of reporting does not provide the same assurances of accuracy of the financial statements as an unqualified audit. An independent audit, performed in accordance with Generally Accepted Auditing Standards promulgated by the American Institute of Certified Public Accountants, should be required from all three pilot organizations. A review or compilation report has a narrower scope than an audit, and the proposed regulations would require an annual unqualified long form audit report from each pilot organization by April 1 of the following year.

The final report emphasizes the need for closer analysis of the reasonableness of expenses included in the rate base. The Report recommends that the Coast Guard issue guidelines spelling out how allowable expenses will be determined and that the expenses and criteria should be consistent for all three pilotage districts. It is therefore proposed, that a new Part 404 be added to the regulations which would provide general guidelines and procedures for Great Lakes pilotage ratemaking.

To some degree in all three pilotage districts, support services, such as pilot boats, are provided by entities that are

directly or indirectly related to the pilot pool or to pilot members of that pool. Although these costs are included in computing the pilotage rate base, the Coast Guard does not audit the accounts of these entities. Because of the owner relationship, these entities are in a position to charge higher prices for these services and therefore receive a higher return on investment to the individual pilot owners. The report recommends that the Coast Guard require each pilotage pool to certify whether any support service entity is related by beneficial ownership to a pilot. If so, the Coast Guard should critically analyze each individual cost element that has been provided by such an entity. The Coast Guard should be assured that the goods or services were provided to the pool at prices no less favorable than could have been obtained from a non-related party bidding competitively.

Therefore, it is proposed that the regulations be amended to require each pilot organization to certify whether any support service entity is directly or indirectly related by beneficial ownership to a pilot.

Similarly, the costs of all support services that pilots require vessels to utilize should be included in the rate base. For example, hand-held radios are not part of the existing pilotage rate base, and the pilots have routinely been charging for them as an additional item. At present, Coast Guard has no control over the rate charged for the use of hand-held radios. Support services, such as the hand-held radios used by the pilots, should be brought into the rate base and not charged for separately outside the rate structure.

Some users have expressed concern that the Coast Guard does not have an adequate range of sanctions to apply against pilots or pilot associations who do not provide timely or adequate service. The principal penalty that has been applied in the past against a pilot is suspension or revocation of his or her license. This involves a formal hearing process and is time-consuming and ineffective for all but the most serious offenses.

There have been no recent cases where a license has been suspended. In addition, the study team found the Coast Guard has existing authority under 46 U.S.C. 9308 to impose a $500 civil penalty on individual pilots or their associations for each violation of the regulations. Although it has not been used to date, the civil penalty is less extreme than suspension of license, increases flexibility, and is consistent with government practices in other areas. Therefore, it is proposed to amend the regulations to state that financial penalties can be applied to pilots as well as vessel operators who are in violation.

The Final Report recommends that the regulations be amended to enable vessel masters to contact the Coast Guard directly, rather than through the pilotage pool, whenever they encounter difficulty in obtaining a pilot in a timely manner. Present regulations state that a vessel may be navigated in the U.S. waters of the Great Lakes without a United States or Canadian Registered Pilot when the Director of the Great Lakes Pilotage Staff, with the concurrence of the Commander, 9th Coast Guard District, notifies the master that a U.S. or Canadian Registered Pilot is not available.

Notification to the master that a pilot is not available is made by the Director through the appropriate pilotage pool, and shall not be deemed given until the notice is actually delivered to the vessel by the pilotage pool. As written, the regulations state that only the pilotage pool can notify the Coast Guard of a problem, and that the failure or delay by the pool in processing a pilotage service request does not constitute constructive notice that a pilot is not available. Therefore, it is proposed to amend the regulations to provide for communications directly between the vessel and the Director.

A "B Certificate" is a certificate, issued by Canada, which authorizes a foreign master to navigate his vessel in undesignated waters of the Great Lakes without a registered pilot. 46 U.S.C. 9302 requires a registered pilot to direct the navigation of a vessel in waters of the Great Lakes designated by the President. Those waters are described in § 401.300.

Pilots on board vessels transiting Lake Erie operated by a master holding a "B Certificate" are not compensated during the open water portion of a voyage, unless their services are actually employed by the vessel. Since there is no pilot boat at Southeast Shoal, where undesignated waters become designated waters, a registered pilot must ride ("dead head") across the undesignated waters of Lake Erie in order to direct the navigation of the vessel while it is in designated waters. Pilots should be compensated for their time in such cases, and the Final Report recommends that a pilotage fee comparable to the detention charges established in existing § 401.420 should be applied when a pilot is required to be aboard a "B Certificate" vessel in undesignated waters, but is not employed by the vessel.

Therefore, it is proposed to amend section 401.410(c) to institute a charge when a pilot is carried on board a vessel transiting Lake Erie operated by a master holding a "B Certificate".

Information Collection

This proposed rule contains no new information collection requirements. The proposed requirement for unqualified audits is not an additional requirement but rather a clarification of the present requirement. The existing regulation requires audits by independent Certified Public Accountants.

Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291, and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this supplemental proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. There would be two identifiable additional costs. One would be the additional charge for one pilot organization to upgrade its financial reporting from a compilation report to an unqualified audit report. The other additional cost would be the charge to be paid by the ship to compensate a registered pilot for "dead heading" across Lake Erie when a vessel's master uses a "B Certificate" in lieu of the pilot. When a vessel's master utilizes his "B Certificate" in the undesignated waters of Lake Erie, the vessel does not incur the trans-lake pilotage charge. However, because there is no pilot boat at Southeast Shoal to embark and disembark the pilot, if the registered pilot must "dead head" across Lake Erie aboard the vessel but is not employed by the vessel, the charge to the vessel is calculated on a basic rate of $38 for each hour or part of an hour. It is estimated that approximately 20 vessels per year would be affected by this charge, and the cost of this "dead heading" charge would average approximately $540 per vessel. The remaining proposed amendments to the regulations are management actions on the part of the Coast Guard that should improve the efficiency and effectiveness of the Great Lakes Pilotage System.

Federalism

This rulemaking proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed

rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 46 CFR Parts 401, 403, and 404

Administrative practice and procedure, Great Lakes, Navigation (water), Reporting requirements, Seamen.

In consideration of the foregoing it is proposed that Chapter III of Title 46 of the Code of Federal Regulations be amended as follows:

PART 401—[AMENDED]

1. The authority citation for Part 401 continues to read as follows:

Authority: 46 U.S.C. 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46; Section 401.105 also issued under the authority of 44 U.S.C. 3507.

2. By revising § 401.320(d)(4) to read as follows:

§ 401.320 Requirements and qualifications for authorization to establish pools.

* * * * *

(d) * * *

* * * * *

(4) It will be subject to audit and inspection by the Coast Guard and will submit by April 1 of each year an unqualified long form audit report for the preceding year prepared by an Independent Certified Public Accounting, performed in accordance with Generally Accepted Auditing Standards promulgated by the American Institute of Certified Public Accountants.

* * * * *

3. In § 401.410 by revising paragraph (c) to read as follows:

§ 401.410 Basic rates and charges on undesignated waters.

* * * * *

(c) When in transit of the undesignated waters of Lake Erie, and the vessel's master uses an appropriate certificate in lieu of a pilot, and the pilot is on board, the vessel shall pay a charge calculated on a basic rate of $38 for each hour or part of an hour of the transit, unless the services of the pilot are utilized and a charge is made under paragraph (a) of this section.

4. By revising § 401.430 to read as follows:

§ 401.430 Prohibited charges.

No rate or charge shall be applied against any vessel, owner or master thereof, by a registered pilot which differs from the rates and charges set forth in this part, nor shall any rates or charges be made for services performed by a registered pilot, or for support services directly related to the provision of pilotage that a registered pilot requires a vessel to utilize, other than those for which a rate is prescribed in this part, without the approval of the Director.

5. By adding a new § 401.432 to read as follows:

§ 401.432 Certification of support services.

Each association holding a Certificate of Authorization shall certify each year whether any support service entity is directly or indirectly related by beneficial ownership to that association or to a United States registered pilot who is also a member of that association.

6. By revising § 401.500 to read as follows:

§ 401.500 Penalties for violations.

Any person, including a pilot, master, owner, or agent, who violates any provision of this part shall be liable to the United States for a civil penalty as set forth in 46 U.S.C. 9308.

7. In § 401.510 by revising paragraphs (b)(1) and (4) to read as follows:

§ 401.510 Operations without registered pilots.

* * * * *

(b) * * *

(1) Notification to the master that a pilot is not available will be made by the Director, either directly to the vessel or through the appropriate pilotage pool, orally or in writing as the circumstances admit, and shall not be deemed given until the notice is actually received by the vessel.

* * * * *

(4) When a pilot is expected to become available within 6 hours of the time his services are required, the vessel shall be informed that a pilot is available and the approximate time he will report on duty. However, should any unusual circumstance or condition exist which may justify notification that a pilot is not available in less than 6 hours, the pilotage pool shall inform the Director as in paragraph (b)(3) of this section, along with the circumstances involved. Additionally, the vessel may contact the Director directly to request notification under paragraph (b)(1) of this section if a notice of pilot availability is not received from the appropriate pilotage pool within two hours of providing its pilotage requirements to the pool.

* * * * *

PART 403—[AMENDED]

8. The authority citation for Part 403 continues to read as follows:

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

9. In Part 403 under "Financial Reporting" in 11. Reporting Requirements by revising paragraph 6. to read as follows:

11. Reporting Requirements

* * * * *

6. Each association holding a Certificate of Authorization shall furnish the Coast Guard by April 1 of each year with an unqualified long form audit report for the preceding year prepared by an Independent Certified Public Accountant, performed in accordance with Generally Accepted Auditing Standards promulgated by the American Institute of Certified Public Accountants.

* * * * *

10. By adding a new Part 404 to read as follows:

PART 404—GREAT LAKES PILOTAGE RATEMAKING

Sec.

404.01 General ratemaking provisions.

404.05 Guidelines.

404.10 Procedures.

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

§ 404.01 General ratemaking provisions.

The purpose of this part is to provide guidelines and procedures for Great Lakes pilotage ratemaking. Included in this part are explanations of the steps followed in developing a pilotage rate adjustment, the analysis used, and the guidelines to be followed in arriving at the pilotage rates contained in Part 401 of this chapter.

§ 404.05 Guidelines.

The following is a listing of the principal general guidelines to be followed in the ratemaking process:

(a) Each expense item shall be governed by a test of reasonableness in determining if a given cost is to be included in the rate base.

(b) Each expense item included in the rate base shall be uniform for all three pilot associations to the extent possible. For example, costs associated with pilot travel and training shall be measured against a common standard.

(c) No expense item may be justified on the basis of past years' expenditures, and each expense item shall be evaluated to determine if it is necessary, and if so, at what dollar amount.

(d) An expense item associated solely with the corporate structure of a pilot organization shall be examined to determine if it is necessary for the provision of pilotage services.

(e) Each expense item must be reasonable, and to the extent possible, measured against comparable or similar

expenses in other industries, or by criteria used by the U.S. Internal Revenue Service.

(f) An expense item must be supported by adequate financial or other statistical data, and must be clearly shown to be a direct cost of providing pilotage services.

(g) If additional detailed analytic criteria are found to be necessary to determine the reasonableness of expenses, they may be utilized, and additional guidelines may also be developed and utilized.

§ 404.10 Procedures.

The following is a general description of the types of analyses performed and the general methodology followed in the development of most Great Lakes pilotage rate adjustments. This methodology may not always be followed because of agreements with Canada or for other reasons. Additional or other types of analyses may also be performed as circumstances admit. The general guidelines contained in § 404.05 of this Part are applied in the analyses identified here.

(a) Revenues earned by all authorized U.S. Great Lakes pilot associations are analyzed and projected for the selected future period.

(b) Expenses incurred by all authorized U.S. Great Lakes pilot associations are analyzed and projected for the selected future period. This analysis includes the application of various guidelines, including those in § 404.05 of this Part.

(c) All projected expenses are segregated into the following categories:

(1) Administration
(2) Dispatching
(3) Pilot Boats
(4) Pilot Travel
(5) Pilot Training
(6) Target Pilot Compensation

(d) Target Pilot Compensation for ratemaking purposes is based on comparability with licensed counterparts on U.S. Great Lakes Vessels, and whether the services are provided in designated or undesignated waters. Target compensation for pilots providing services in designated waters (46 CFR 401.405) should be comparable to masters on U.S. Great Lakes vessels, and target compensation for pilots providing services in undesignated waters (46 CFR 401.410) should be comparable to first mates on U.S. Great Lakes vessels.

(e) The number of pilots used for ratemaking purposes is based on pilot workload standards of 1,000 hours per pilot per season in designated waters, and 1,800 hours per pilot per season in undesignated waters.

(f) Estimated vessel traffic is projected by reviewing traffic trends, and by obtaining the views of knowledgeable interested persons.

Dated: March 16, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-6794 Field 3-21-89; 8:45 am]

BILLING CODE 4910-14-M

Reader Aids

Federal Register

Vol. 54, No. 54

Wednesday, March 22, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8519-8722.....1
8723-9024.....2
9025-9194.....3
9195-9412.....6
9413-9752.....7
9753-9978.....8
9979-10134.....9
10135-10266.....10
10267-10534.....13
10535-10620.....14
10621-10970.....15
10971-11156.....16
11157-11362.....17
11363-11482.....20
11483-11692.....21
11693-11934.....22

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

2.....9670
3.....9670
5.....9670
6.....9670
7.....9670
8.....9670
9.....9670
10.....9670
11.....9670
12.....9670
15.....9670
16.....9670
17.....9670
18.....9670
19.....9670
20.....9670
21.....9670
22.....9670

3 CFR

Proclamations:
5938.....8723
5939.....9193
5940.....9195
5941.....10261
5942.....11483
5943.....11485

Executive Orders:
12171 (Amended by EO 12671).....11157
12670.....10267
12671.....11157

Administrative Orders:
Memorandums:
Feb. 14, 1989.....9753
Presidential Determinations:
No. 89-11 of Feb. 28, 1989.....9413

5 CFR

317.....9755
339.....9761
831.....10135
1204.....8725

Proposed Rules:
1201.....8753

7 CFR

21.....8912
180.....11487
301.....11489
401.....9766, 10621
760.....11693
800.....9197
907.....9025, 10136, 10535, 10971, 11159
910.....9026, 10137, 11160
948.....11490
955.....10972
959.....8519
980.....8521
985.....9766, 11491
989.....9415
1250.....11492
1421.....11493
1427.....11493
1434.....11493
1809.....8521
1910.....11363
1941.....11363
1922.....8521
1930.....9197
1944.....8521
1945.....8521
1951.....10269
1965.....8521

Proposed Rules:
1.....11204
15b.....9966
29.....10012
51.....9824, 10014
52.....10333
55.....11541
56.....11541
58.....9452
70.....11541
301.....10992
318.....9453, 11607
401.....9825
402.....9826
411.....9827
416.....9828
422.....9829
425.....9830
430.....9831
433.....9831
435.....9832
436.....9833
437.....9834
443.....9835
725.....11001
726.....11001
800.....9054
810.....11543
906.....9455
917.....9457
925.....11004
927.....8544
928.....10155
933.....10341
946.....10156
982.....11544
989.....10158
1005.....11206
1040.....10214, 11545
1065.....11546
1106.....9458, 11735
1137.....10159
1901.....10342
1951.....9217
1955.....10342
1980.....10342

8 CFR

204.....11160
214.....10978
Proposed Rules:
204.....9459
210a.....9054

9 CFR

92.....9768
313.....9198
327.....10621
381.....10621
Proposed Rules:
1.....10822
2.....10835
3.....10897, 11478
91.....9459
92.....9836, 10356
145.....9842
147.....9842
203.....10018
317.....9370
381.....9370

10 CFR

9.....10138
50.....11161
430.....11320
1039.....8912
Proposed Rules:
4.....9966, 11224
31.....10550
50.....9229
600.....10670
1040.....9966

11 CFR

114.....10622

12 CFR

201.....10270
202.....9416
205.....9416
208.....10482
226.....9417
265.....10139
325.....11500
Proposed Rules:
563c.....11736
571.....11736

13 CFR

124.....10271
Proposed Rules:
113.....9966
120.....9233, 9424
129.....9424

14 CFR

13.....11914
39.....8527, 9026, 10139, 10276, 10622, 10624, 10625, 11163–11177, 11366–11368, 11593, 11695
71.....8528, 8726, 8727, 9028, 9009, 9406, 10140, 11178, 11179
91.....11926
95.....10278
97.....9030, 10284
129.....11116
135.....11926
241.....9590
1208.....8912
1215.....10627
1260.....9426
Proposed Rules:
1.....9276
21.....9738, 10160, 10163
23.....9276, 9338, 10160
25.....10160
36.....9738
39.....8544–8550, 8758, 8759, 10165, 11224–11228, 11381, 11739, 11740
43.....9738
71.....8551–8556, 8760, 8761, 9061, 9063, 10166, 10167, 11005, 11230–11232, 11382, 11741
73.....10167
75.....9063–9065
91.....9338, 9738
121.....10484
135.....9338, 10484
141.....9738
147.....9738
1251.....9966
1259.....10357

15 CFR

11.....8912
799.....9770, 11517
Proposed Rules:
787.....9233
1150.....10550

16 CFR

13.....9198, 9199, 9428
456.....10285
Proposed Rules:
13.....11383
460.....11385

17 CFR

30.....11179
200.....11369
210.....10306
229.....9770
230.....11369
239.....11369
240.....10306
249.....9770, 10306
270.....10306
274.....10306
Proposed Rules:
33.....11233
34.....9460
240.....9842, 10360, 10552, 10675, 10680
270.....9843

18 CFR

Ch. I.....9031
141.....8529
154.....8728
157.....8728
260.....8529, 8728
277.....8529
284.....8728
357.....8529
385.....8728
388.....8728
410.....9199
1306.....8912
Proposed Rules:
270.....8557
271.....8557

19 CFR

Ch. I.....9429
10.....10322
24.....10322, 11374
113.....10536
148.....10322
Proposed Rules:
101.....11742
24.....10019
132.....10019, 10214
141.....10019
142.....10019
143.....10019
177.....11547

21 CFR

1.....9033, 11607
2.....9033, 11607
5.....9033, 11607, 11696, 11866
7.....9033, 11518, 11607
10.....9033, 11607
12.....9033, 11607
13.....9033, 11607
14.....9033, 11607, 11698
16.....9033, 11607
20.....9033, 11607
21.....9033, 11607
25.....9033, 11607
50.....9033, 11607
56.....9033, 11607
58.....9033, 11607
74.....9200
176.....10627
177.....10630
178.....9774
184.....10482
291.....8954
341.....11866
510.....8880, 9979
520.....8880
522.....9590
546.....11698
558.....9429, 10979, 11182, 11519
1308.....10632, 11520
Proposed Rules:
291.....8973, 8976
801.....11743
1306.....11006
1308.....11387

22 CFR

51.....8531
Proposed Rules:
142.....9966
217.....9966

23 CFR

646.....9039

24 CFR

42.....8912
201.....10536
219.....9708
840.....8880
968.....8880, 9039
990.....10657

26 CFR

1.....8728, 10537, 10616, 10660 10980, 11523, 11866
7.....9200
301.....11699
601.....10660
602.....10537, 11523
Proposed Rules:
1.....9236, 9460, 11007, 11236
7.....9236
31.....11236
35a.....11236
301.....11744

27 CFR

19.....11702
194.....11866
Proposed Rules:
5.....11745
19.....11745

28 CFR

0.....11523
2.....11686, 11687, 11689
11.....9979
60.....9430
64.....9043
511.....11322
541.....11322
Proposed Rules:
513.....11326
544.....11331
545.....11332

29 CFR

12.....8912
1910.....9294
1952.....9044
2520.....8624
2610.....10660
2619.....10661
2676.....10662
Proposed Rules:
530.....11008
1626.....10025

30 CFR

701.....9724
773.....8982
778.....8982
785.....9724
843.....8982
925.....10663
931.....9980, 11183
934.....10141
Proposed Rules:
56.....10256
57.....10256
202.....9066
206.....9066
210.....9066
212.....9066
761.....9847
931.....10562
935.....8561, 8562, 11388, 11746
946.....11748

31 CFR

203.....8532
214.....8532
500.....11185
515.....9431
Proposed Rules:
235.....10366
240.....10366
245.....10366
248.....10366

32 CFR

45.....9983
199.....8733, 9202
259.....8912
358.....9989

362.....11524
383.....8534
518.....9990, 10541
Proposed Rules:
284.....11237

33 CFR

117.....10541, 10665
165.....9775, 9776, 9778, 11185
Proposed Rules:
100.....10373–10375
117.....10377, 10562
401.....9504

34 CFR

15.....8912
237.....10966
607.....11481
Proposed Rules:
76.....8708
77.....8708
104.....9966
250.....10500
298.....8708
300.....10500
315.....10500
324.....10500
332.....10500
366.....10500
369.....10500
385.....10500
396.....10500
400.....10500
600.....11354
607.....10500
608.....10500
609.....10500
624.....10500
628.....10500
629.....10500
630.....10500
631.....10500
637.....10500
639.....10500
643.....10500
644.....10500
645.....10500
646.....10500
649.....10500
656.....10500
657.....10500
658.....10500
668.....11354
692.....10500
745.....10500
755.....10500
773.....10500

36 CFR

904.....8912
Proposed Rules:
290.....9066

37 CFR

1.....9431
Proposed Rules:
1.....9507, 11009, 11334
2.....9514, 11009
10.....11334

38 CFR

Ch. I.....11375
4.....10482
19.....11375
25.....8912
Proposed Rules:
6.....11390
8.....11390
18.....9966
21.....9237, 10377, 10378

39 CFR

111.....9210
777.....10666
3001.....11524
Proposed Rules:
111.....10563
3001.....9848, 11394

40 CFR

4.....8912
52.....8537, 8538, 9212, 9432–9434, 9780, 9781, 9783, 9796, 9992, 9993, 10145, 10147, 10214, 10322, 10323, 10982, 10983, 11186, 11524
61.....10985
62.....9045
80.....11868
81.....11526
124.....9596
147.....8734, 10616
152.....11922
180.....8540, 9799, 10542, 10962, 11704, 11705
228.....11189
261.....11706
270.....9596
271.....10986
300.....10512, 10520, 11203
370.....10325
372.....10668
471.....11346
712.....11478
716.....11478
Proposed Rules:
7.....9966
52.....8762, 8764, 10380, 10381, 10565, 11016, 11108, 11413, 11750
60.....8564, 8570
61.....9612
228.....10386
260.....10388
261.....10388
262.....10388
264.....10388
265.....10388
268.....10388
270.....10388

41 CFR

101–6.....9213
101–7.....10543
105–51.....8912
114–50.....8912
128–18.....8912
Proposed Rules:
105–8.....11750

42 CFR

5.....8735
405.....8994
433.....8738
435.....8738
1001.....9995
Proposed Rules:
110.....9180, 11547

43 CFR

Public Land Order:
6710.....9213
6711.....10988
Proposed Rules:
4.....9852, 10784
8380.....9066

44 CFR

5.....11713
25.....8912
64.....11527
65.....8540
206.....11610
207.....11610
352.....10616
Proposed Rules:
59.....9523
60.....9523
65.....9523
67.....10682

45 CFR

15.....8912
233.....10544
306.....10148
Proposed Rules:
84.....9966
605.....9966
1151.....9966
1170.....9966
1232.....9966
1340.....11246
1632.....10569

46 CFR

550.....11716
585.....11529
587.....11529
588.....11529
Proposed Rules:
Ch. I.....8765
221.....10168
401.....11930
403.....11930
404.....11930
550.....11249
580.....11249
581.....11249

47 CFR

1.....10326
2.....9996
21.....10326
15.....9996
22.....10326, 11535
65.....9047
69.....11536, 11717
73.....8742–8744, 9214, 9437, 9800, 9804, 9997–9999, 12203, 11537, 11538
74.....10326
76.....9999
80.....8541, 8745, 10007
87.....11719
94.....10326
Proposed Rules:
15.....11415, 11548
68.....9067
73.....8765–8767, 10026, 10170–10172, 11250, 11251, 11416, 11549
74.....11549
76.....10026

48 CFR

202.....11722
204.....9807, 11722
207.....11722
215.....11722
219.....9807
220.....11722
225.....11722
234.....11722
235.....11722
252.....9807, 11722
271.....11722
501.....9049
505.....10149
514.....9049
532.....9049
552.....9049
553.....10149
932.....9807
952.....9807
1428.....10988
1452.....10988
1532.....9215
1552.....9215
1801.....10796
1804.....10796
1805.....10796
1807.....10796
1815.....10796
1816.....10796
1822.....10796
1823.....10796
1832.....10796
1834.....10796
1835.....10796
1836.....10796
1837.....10796
1842.....10796
1843.....10796
1845.....10796
1846.....10796
1847.....10796
1848.....10796
1852.....10796
1853.....10796
App I.....11722
Proposed Rules:
5.....9720
15.....10133
17.....9720
35.....9720
42.....10133
52.....10133
227.....11764
252.....11764
415.....11550
525.....9067
546.....9067
552.....9067

49 CFR

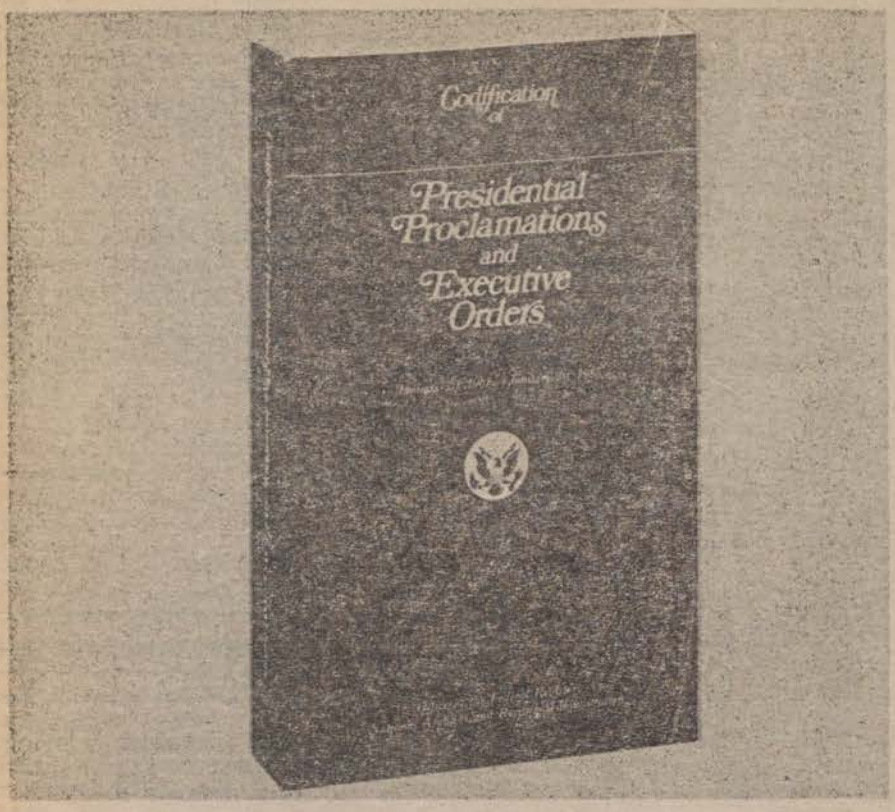
1.....8746, 10009
7.....10009
24.....8912
173.....10010
580.....8747–8750, 9809, 9816, 11729, 11730, 11731, 11732, 11733
800.....10331
805.....10331
826.....10332
1105.....9822
1135.....8720
1152.....9822
1312.....10533
1314.....9052, 10533

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List March 20, 1989

New edition now available....



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period January 20, 1961, through January 20,1985, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1961-1985 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

MAIL ORDER FORM To:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ *check,* ☐ *money order, or charge to my*

Deposit Account No. ☐☐☐☐☐☐☐–☐ *Order No.* _____

master charge VISA

Credit Card Orders Only

Total charges $ _____. Fill in the boxes below:

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Master Charge Interbank No. ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00a.m. to 4:00p.m. eastern time, Monday-Friday (except holidays).

★6105

Please send me _____ *copies of the* ***Codification of Presidential Proclamations and Executive Orders*** *at $20.00 per copy. Stock No. 022-022-00110-0*

NAME—FIRST, LAST

COMPANY NAME OR ADDITIONAL ADDRESS LINE

STREET ADDRESS

CITY STATE ZIP CODE

(or) COUNTRY

PLEASE PRINT OR TYPE

(Revised 10-15-85)