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WHO: The Office of the Federal Register.

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DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Commodity Credit Corporation

7 CFR Parts 11, 1485 and 1550

Foreign Market Development Programs

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations applicable to certain foreign market development programs for United States agricultural commodities conducted by the Foreign Agricultural Service (FAS) and Commodity Credit Corporation (CCC). The revised regulations contain provisions designed to ensure that the benefits generated by the programs are as broadly distributed throughout the relevant agricultural sector(s) as feasible and, particularly, that no U.S. firm or individual derives an unfair advantage or benefit from program activities. The final rule also updates regulations applicable to FAS' foreign market development programs in 7 CFR part 11, subpart B, by revising legal citations and terminology and updating references to FAS programs. As revised, the regulations would now appear in 7 CFR part 1550. The final rule also adds a new part 1485 dealing specifically with certain CCC foreign market development programs.

EFFECTIVE DATE: October 13, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Passig, Director, Marketing Programs Division, Foreign Agricultural Service, USDA. Telephone: (202) 447–5521.

SUPPLEMENTARY INFORMATION:

Rulemaking Matters

This action has been reviewed under Department of Agriculture procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "non-major". It has been determined that this rule will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since neither FAS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to this rule.

This action will not have a significant impact upon area and community development. Therefore, review as provided by Executive Order 12372 was not used to assure that units of local government are informed of this action.

Discussion of Comments

A proposed rule indicating proposed revisions to the regulations was published for public comment on April 21, 1988 (53 FR 13125). Comments were received from nonprofit trade associations, private firms, individuals, and state organizations. A total of thirty-six (36) responses were received within the comment period (by June 20, 1988), and five (5) additional comments were received after the close of the comment period. In considering the comments received, only those that arrived within the specified comment period were considered by FAS in the formulation of this final rule.

Of the thirty-six (36) comments receiving consideration, eleven (11) were generally opposed to, while twenty-five (25) were in support of, the proposed rule. Those comments that were in favor of the proposed rule generally focused on section 1550.6 of the proposed rule, Program Participation and Benefits, (§ 1550.5 of this final rule) commonly referred to as the "conflict of interest" provision and stated that the rule would accomplish its objective of ensuring that benefits derived from the foreign market development programs would be as broadly distributed throughout the relevant agricultural sector(s) as feasible, and that no U.S. firm or individual would derive an unfair advantage or benefit from program activities. Other comments in favor of the proposed rule stated that such a rule would improve the overall fairness of the foreign market development programs, would serve to broaden participation among potential exporters, and would generally increase support for such programs at all levels of U.S. agriculture.

Of those eleven (11) organizations and individuals that were opposed to the proposed rule, four (4) nonprofit trade organizations and one (1) private individual believed that such a proposed rule was unnecessary because the motive for the proposed rule has its basis in unsubstantiated accusations that some firms received unfair commercial benefits from participation in the programs. These respondents propose that program participants adopt provisions for self-regulation as an alternative to § 1550.6 of the proposed rule (§ 1550.5 of this final rule). In considering these comments, the idea of self-regulation was rejected since separate industry guidelines may not be as beneficial as formal uniform guidance from the FAS regarding what constitutes conflicts of interest. Furthermore, it is irrelevant that any accusations of unfairness may be unsubstantiated. The regulation dealing with conflict of interest is intended to eliminate even the appearance of unfairness and to avoid future problems.

Another nonprofit trade organization that opposed the proposed rule recommended that penalties be established for conflict of interest violations in addition to those specified in the proposed rule. The commentor did not specify the nature of the desired penalties. Additionally, it was suggested that FAS channel funding for livestock promotion through a new organization which would include livestock exporters. In considering this comment, the suggestion that penalties be established was rejected. The remedies for noncompliance in § 1550.7(b) of the proposed rule (§ 1550.6(b) of this final rule), including disallowing claims and terminating agreements, are deemed

sufficient to provide reasonable assurance of compliance. The Department is not desirous of penalizing firms, but merely desires to assure that no firm has an unfair advantage from program participation. The suggestion that FAS support livestock promotion by working with a new organization does not address the general issue of safeguards against conflict of interest program-wide. The potential for possible abuse would still exist in a new organization and remains an issue for other industry groups.

One (1) nonprofit agricultural trade association indicated that it was not opposed to the proposed rule if in fact it was necessary to achieve the objectives of the foreign market development programs. However, they do not support the proposed changes if no enhancement to the programs for the segments of the agricultural industry currently represented by the various cooperators are made. FAS is of the strong opinion that a need for these regulations does exist and is proceeding on that basis.

One (1) nonprofit agricultural trade association objected to the rule's apparent failure to adequately differentiate between a variety of diverse programs in the attempt to fit all varieties of programs under one overall rule. Also, two (2) nonprofit trade associations recommended elimination of a specific provision in § 1550.3 of the proposed rule interpreting that provision as an indication of a preference on the part of FAS to authorize activities of agricultural commodities on a generic basis. In response to these comments, the definition of market development project agreements has been revised to make it clear that the rule applies to programs which are entirely generic (i.e. not brand identified), entirely brand-identified, or programs which include both elements. Nonprofit trade organizations may sponsor brand promotion activities, when such promotion is in accord with the purposes of the market development programs, and specifically approved. In addition, the definition has been revised to remove any implication that generic promotion is favored.

Two (2) nonprofit trade associations and one (1) private firm expressed concern about the reference to a specific reimbursement level in § 1550.4 dealing with Export Incentive Program (EIP) Agreements. The proposed rule was revised to eliminate this reference as it may inaccurately give the impression that a specific contribution level is required. In the EIP, FAS reimburses the participant a stated percentage of eligible promotion costs and the reimbursement percentage can vary by participant, program, and commodity. It was also suggested that probable success in cutting market losses should be included as a criterion in approving programs. The regulations already include the concept of maintaining markets which adequately addresses the stated concerns. However, § 1550.4(c) was revised to include consideration of the adequacy of supplies of U.S. commodities among the criteria for approving programs.

One (1) nonprofit trade association criticized § 1550.6 of the proposed rule (§ 1550.5 of this final rule) for failing to define the types of export activities and related services that industry representatives can perform overseas while participating in approved activities. We feel that the rule is sufficiently clear in that § 1550.5(e)(3) of the final rule states that individuals cannot conduct private business unless as part of a sales team. No further change is necessary in this regard. The same organization stated that it was not known whether prior approval of the selection criteria of industry representatives to participate in activities would be required by the Administrator, FAS. The regulation gives the Administrator the option to require prior approval of the criteria for selecting industry representatives and was revised to make this requirement clearer. This flexibility was deemed necessary to insure that programs are not unduly disrupted; however, it is anticipated that such approval will usually be required. Therefore, participants should be prepared to submit the information in a timely fashion.

Internal review resulted in revising several subsections for clarification purposes with no substantive changes. For example, the sections setting forth the criteria for reviewing program proposals has been clarified to distinguish between the eligibility of organizations to participate and the merits of particular market development proposals. Also, the review criteria have been revised for clarity without any substantive change from the proposed rule.

In addition, a definition section was added to clarify the scope and intent of the regulations even though such changes were not recommended by any comments received.

The conflict of interest provisions of the proposed rule (§ 1550.6) were intended to apply to the Targeted Export Assistance (TEA) program, a market development program of CCC administered by FAS, in addition to programs operated with funds appropriated to FAS. The TEA program operates under cooperative agreements between CCC and commodity groups for the specific purpose of developing foreign markets for U.S. agricultural commodities.

Since CCC is a separate organizational unit within the Department of Agriculture, the final rule adds a new part 1485 to title 7 of the Code of Federal Regulations which specifically restates the conflict of interest provisions as being applicable to the TEA program. The TEA program, mandated by section 1124 of the Food Security Act of 1985 (7 U.S.C. 1736s), is intended to counter or offset the adverse effect on the export of U.S. agricultural commodities or the product thereof of a subsidy, import quota, or other unfair trade practices of a foreign country.

The final rule includes a description of the TEA program and the criteria utilized in reviewing the merits of proposals for program funds. This description restates in a clearer manner the information published in the Federal Register notice on May 3, 1989 (54 FR 18916).

Changes were made in the conflict of interest provision itself. The regulation now refers only to "affiliates" with respect to prohibitions on export sales since reference to "parent organizations" and "subsidiaries" was superfluous. The regulation was also revised to more clearly specify that "affiliates" refers to any investment relationship and applies only to investments by organizations participating in market development agreements. It was also determined that the requirement to submit a certification under § 1550.7 of the proposed rule (§ 1550.6 of this final rule) was unnecessary and a statement of intent regarding export sales submitted within 30 days after the effective date of the regulations would be sufficient when coupled with the possibility of requiring a certification at a later time.

The citation of authority for part 1550 has been changed to include reference to section 4214(d) of the Agricultural Competitiveness and Trade Act of 1988 (title IV of the Omnibus Trade and Competitiveness Act of 1988). This section directs the Secretary of Agriculture to take appropriate action to prevent conflicts of interest in the cooperator program.

The Office of Management and Budget has received the collection of information contained in the proposed rule and assigned OMB Control No's. 0551–0027 and 0551–0026. See §§ 1485.7 and 1550.7.

List of Subjects in 7 CFR Parts 1485 and 1550

Agricultural commodities, Exports.

Accordingly, title 7 of the Code of Federal Regulations is amended as follows:

1. Part 11 is removed.

2. Part 1485 is added to read as follows:

PART 1485—COOPERATIVE AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

Sec.

Authority: Sec. 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(f)).

§ 1485.1 Purpose and scope.

This part sets forth policies and requirements with respect to the conduct by the Commodity Credit Corporation of the Targeted Export Assistance (TEA) program conducted pursuant to section 1124 of the Food Security Act of 1985. In addition, §§ 1485.2, 1485.5 and 1485.6 apply to any other agreement with the Commodity Credit Corporation that specifically incorporates the provisions of such sections.

§ 1485.2 Definitions.

(a) *Agricultural commodities* includes agricultural commodities and products thereof.

(b) *Affiliate or affiliated organization* means any partnership, association, company, corporation, trust, or any other legal entity in which the program participant has any investment other than an investment in any mutual fund.

(c) *CCC* means the Commodity Credit Corporation.

(d) *Participant and program participant* shall be deemed to mean any entity entering into an agreement within the scope of this part 1485.

(e) *Sales teams* are teams engaged in activities intended to result in specific sales by team members.

(f) *Trade teams* are teams engaged in activities to promote the interests of the entire agricultural sector represented by the program participant.

§ 1485.3 Targeted Export Assistance Program Agreements.

(a) *Purpose.* Agreements entered into under this section will be for the purpose of countering or offsetting the adverse effect on exports of agricultural commodities of a subsidy, import quota or other foreign unfair trade practices of a foreign country, with first consideration given to commodities with respect to which there has been a favorable decision under section 301 of the Trade Act of 1974 or for which exports have been adversely affected by retaliatory actions related to a favorable decision under section 301 of the Trade Act of 1974.

(b) *Eligible Organizations.* Organizations selected shall represent the commodity being assisted on the broadest possible basis, with priority given to those which are industry-wide and nation-wide in membership and scope. Participants must demonstrate an ability to provide a U.S.-based staff capable of developing, supervising and carrying out market development projects overseas, and be willing and able to contribute resources to a joint project.

(c) *Use of Third Parties.* A participant may undertake activities directly or through a third party provided that such participant remains responsible for the activities of the third party.

(d) *Contributions.* Participants are expected to contribute funds or make in-kind contributions toward completion of approved market development projects. Contributions by third parties will be accepted as partially satisfying the contribution obligation of the participant.

(e) *Reimbursement.* CCC will make commodity certificates or, at the option of CCC, U.S. dollar funds, available up to the amount stated in the Targeted Export Assistance Program Agreement, to reimburse participants for expenditures incurred in conducting activities authorized by the agreement and described and budgeted in an activity plan approved in advance by FAS.

(f) *Consideration of Projects.* Targeted Export Assistance Project Agreements will be entered into by FAS only if it is determined that such agreements could counter or offset the effects of foreign unfair trade practices by contributing to the effective creation, expansion, or maintainance of markets for the affected commodities in foreign markets based on available supplies of those commodities for export and international market conditions. Activity plans will be required from organizations selected to participate in the Targeted Export Assistance program and will serve as a basis for the expenditure of CCC resources committed to Targeted Export Assistance Project Agreements. Activity plans will be reviewed according to the following criteria:

(1) The market potential for the commodities covered in the markets identified for promotional effort and the identification of conditions affecting the level of U.S. exports which could be influenced by the projects proposed;

(2) The extent and complexity of activities proposed in relation to each Cooperator's prior export market development experience and U.S. based staff resources;

(3) The likelihood of these activities influencing conditions affecting the level of U.S. exports.

(4) Anticipated U.S. industry and third party contributions to the projects proposed, as indicators of the potential success of those activities which would require such support to succeed;

(5) Provision for appropriate monitoring and evaluation of activities proposed within the plan.

§ 1485.4 Targeted Export Assistance/Export Incentive Program Agreements.

(a) *Eligible Commodities.* Agreements entered into under this section will be for the purpose specified in § 1485.3(a), when FAS has determined that branded promotion of the commodity in export markets will be a preferred means of expanding total U.S. exports of the commodity concerned.

(b) *Eligible Organizations.* TEA/EIP agreements will be entered into with private U.S. entities.

(c) *Use of Third Parties.* An entity that enters into a TEA/EIP Agreement may undertake market development activities directly or through a third party provided such entity remains responsible for the activity.

(d) *Consideration of Projects.* TEA/EIP Agreements will be entered into by FAS only if it is determined that such agreements with private firms could counter or offset the effects of foreign unfair trade practices by contributing to the effective creation, expansion, or maintenance of markets for the affected commodities in foreign markets. Project proposals will be reviewed in relation to market conditions in the countries where activities are proposed, and in relation to the proposing firms prior experience in exporting and in market promotion activities abroad, based upon the same criteria set forth in § 1485.3(f)(1–3).

§ 1485.5 Program Participation and Benefits.

(a) This section establishes requirements applicable only to participation in Targeted Export Assistance Project Agreements and any other agreement with CCC that specifically incorporates the provision of this part.

(b) *General.* It is the policy of CCC to insure that the benefits generated by agreements for the development of foreign markets for United States agricultural commodities are as broadly distributed throughout the relevant agricultural sector as feasible and, particularly, that no program participant derives an unfair advantage or benefit from activities conducted pursuant to the agreement, whether funded with CCC assets or industry contributions.

(c) *Industry Participation.* When required by CCC, program participants entering into an agreement shall promptly furnish to CCC for approval its criteria for the selection of U.S. agricultural industry representatives to participate in activities conducted pursuant to the agreement, such as trade teams, sales teams, and trade fairs, and its criteria for the selection of firms to participate in U.S. brand-identified promotions. Such criteria must ensure participation on an equitable basis by a representative cross section of the relevant U.S. agricultural industry. If CCC requests submission of criteria for approval, the program participant shall not make any selections using criteria disapproved by CCC after the program participant has been notified of CCC's disapproval.

(d) *Distribution of Information.* All program participants shall provide, on a timely basis, upon request of any entity in the United States, other than a representative of a foreign government, any and all data developed and produced with CCC assets or funds of the program participant contributed under the terms of the agreement with CCC. Any fee charged in connection therewith may not exceed the costs incurred in assembling, duplicating and distributing the requested material.

(e) *Export Activities and Related Services.* (1) Neither program participants nor affiliated organizations shall, during the term of the agreement, make export sales of agricultural commodities of the kind which are promoted, in whole or in part, by use of CCC assets.

(2) Neither program participants nor affiliated organizations may assess fees for services provided to exporters in facilitating an export sale if the promotional activities intended to directly result in that specific export sale are supported, in whole or in part, by CCC assets. This paragraph applies to activities such as those involving discussions with potential buyers or the solicitation of specific sales including activities performed by sales teams and performed through trade fairs rather than activities of a more general promotional nature. This paragraph does not apply to checkoffs or membership dues based on commodity sales when such assessments are a condition of membership in the participating organization.

(3) Participants in approved program activities shall not use the activities to promote private self-interests or conduct private business, except as members of sales teams or as part of a U.S. brand-identified promotion when such activities are specifically approved by CCC.

§ 1485.6 Compliance with Program Requirements.

(a) Within 30 days after the effective date of these regulations, program participants shall submit a written statement to the Vice President, CCC, who is the Administrator, Foreign Agricultural Service (FAS), that neither they, nor their affiliated organizations, will, after the effective date of these regulations, make export sales of agricultural commodities promoted, in whole or in part, by the use of CCC assets during the term of an agreement between the program participant and CCC within the scope of this part 1485. CCC may, from time to time, require program participants to submit certifications for purposes of this part as to export sales.

(b) In the event of noncompliance with any provisions of these regulations CCC may disallow a claim submitted under an agreement for expenses incurred after the effective date of these regulations or terminate the agreement in addition to any other remedies available to CCC.

§ 1485.7 Paperwork Reduction Act assigned number.

Information collection requirements contained in these regulations have been submitted to OMB for approval under control number 0551–0027. However, these requirements are not effective until final clearance is received from OMB.

3. Part 1550 is added to read as follows:

PART 1550—PROGRAMS TO HELP DEVELOP FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

Sec.

Authority: Sec. 601 of the Agricultural Act of 1954, as amended (7 U.S.C. 1761); Secs. 108(d)(2)(B) and 108(f) of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1708); Sec. 4214(d) of the Agricultural Competitiveness and Trade Act of 1988 (7 U.S.C. 5234(d)); E.O. 12220, 45 FR 44245.

§ 1550.1 Purpose and scope.

(a) This part sets forth policies and requirements with respect to the conduct by the FAS of programs utilizing public or private entities in the United States to help develop foreign markets for United States agricultural commodities on a mutually benefiting basis. As far as practicable, FAS relies upon representatives of the private U.S. agricultural sector to carry out market development activities through cooperative agreements.

(b) These activities include entering into contracts pursuant to which FAS procures, for a stated consideration, property and services needed in developing markets for U.S. agricultural commodities.

§ 1550.2 Definitions.

(a) *Agricultural commodities* includes agricultural commodities and products thereof.

(b) *Affiliate* or *affiliated organization* means any partnership, association, company, corporation, trust, or any other legal entity in which the program participant has any investment other than an investment in any mutual fund.

(c) *Cooperator* means an entity entering into a Market Development Project Agreement.

(d) *Export Incentive Program Agreements* mean cooperative agreements between FAS and a private United States entity for the purpose of maintaining, expanding or creating foreign markets for United States agricultural commodities through the promotion of brand-identified agricultural commodities.

(e) *FAS* means the Foreign Agricultural Service of the United States Department of Agriculture.

(f) *Incentive payment* means FAS reimbursement for eligible promotion costs incurred under the terms of an Export Incentive Program Agreement.

(g) *Market Development Project Agreements* mean cooperative agreements between FAS and United States agricultural trade associations or associations of State Departments of Agriculture for the purpose of maximizing sales in foreign markets of U.S. agricultural commodities. Activities to be undertaken are intended to promote specific commodities on a generic or brand-identified basis, or through programs which include both elements.

(h) *Participant or program participant* means any entity entering into an agreement within the scope of this part 1550.

(i) *Project funds* are funds made available by FAS to program participants.

(j) *Sales teams* are teams engaged in activities intended to result in specific sales by team members.

(k) *Trade teams* are teams engaged in activities to promote the interests of the entire agricultural sector represented by the program participant.

§ 1550.3 Market Development Project Agreements.

(a) *Eligible Organizations.* In selecting trade and Agricultural groups as cooperators, representative nonprofit U.S. agricultural trade organizations will be used to the maximum extent possible. Organizations selected should represent the commodity being promoted on the broadest possible basis, with priority given to those which are industry-wide or nationwide in membership and scope. Cooperators must demonstrate an ability to provide U.S.-based staff capable of developing, supervising, and carrying out projects overseas, and be willing and able to contribute resources to a joint project.

(b) *Use of Third Parties.* A Cooperator that enters into a Market Development Project Agreement may undertake market development activities directly or through a third party provided that such Cooperator remains responsible for the activities of the third party.

(c) *Contributions.* Cooperators are expected to contribute funds or make in-kind contributions towards completion of approved market development projects. Contributions by third parties will be accepted as partially satisfying the contribution obligation of the Cooperator.

(d) *Project Funds.* FAS will make funds available, up to the amount stated in the Market Development Project Agreement, to reimburse Cooperators for expenditures incurred in conducting activities authorized by the agreement and budgeted in a marketing plan approved in advance by FAS. Funds will be paid in United States dollars unless the Cooperator and FAS specifically agree that payment will be made in foreign currencies.

(e) *Consideration of Projects.* Market Development Project Agreements will be entered into by FAS only if it is determined that such agreements could contribute to the effective creation, expansion, or maintenance of foreign markets for U.S. agricultural commodities based on available supplies of those commodities for export and international market conditions. Marketing plans will be required from organizations selected to participate in Market Development Project Agreements and will serve as a basis for the expenditure of funds committed to Market Development Project Agreements. Marketing plans will be reviewed according to the following criteria:

(1) The market potential for the commodities covered in the markets identified for promotional effort and the identification of conditions affecting the level of U.S. exports which could be influenced by the projects proposed;

(2) The extent and complexity of activities proposed in relation to each Cooperator's prior export market development experience and U.S.-based staff resources;

(3) The likelihood of these activities influencing conditions affecting the level of U.S. exports.

§ 1550.4 Export Incentive Program Agreements.

(a) *Eligible Organizations.* Export Incentive Program (EIP) agreements will be entered into with private U.S. entities.

(b) *Use of Third Parties.* An entity that enters into an Export Incentive Program Agreement may undertake market development activities directly or through a third party provided such entity remains responsible for the activity.

(c) *Reimbursement.* After submission of a claim for an incentive payment, FAS will reimburse a percentage of eligible promotion costs defined in the Export Incentive Program Agreement, up to the amount stated in the Agreement, to carry out the purposes of the project. Such a claim will be submitted on a marketing year basis or at such other time as may be agreed by FAS. The amount of funds to be paid by FAS on each claim will be specified in the Agreement and will be based upon either a stated percentage of the promotional expenditures claimed, volume of exports over a stated period, or a combination of both. Funds will be paid in U.S. dollars only.

(d) *Consideration of Projects.* Export Incentive Program Agreements will be entered into by FAS only if it is determined that such agreements with private firms could contribute to the effective creation, expansion, or maintenance of foreign markets for the commodities concerned. Project proposals will be reviewed in relation to market conditions in the countries where activities are proposed, and in relation to the proposing firm's prior experience in exporting and in market promotion activites abroad, based upon the same criteria set forth in section 1550.3(e)(1–3).

§ 1550.5 Program participation and benefits.

(a) *Scope.* This section establishes requirements applicable only to participation in Market Development Project Agreements and any other agreement with FAS that specifically incorporates the provisions of this part.

(b) *General.* It is the policy of FAS to insure that the benefits generated by agreements are as broadly distributed throughout the relevant agricultural sector as feasible and, particularly, that no program participant derive an unfair advantage or benefit from activities conducted pursuant to the agreement, whether funded with project funds or industry contributions.

(c) *Industry Participation.* When required by FAS, program participants shall promptly furnish to FAS for approval its criteria for the selection of U.S. agricultural industry representatives to participate in activities conducted pursuant to the agreement such as trade teams, sales teams, and trade fairs, and its criteria for the selection of firms to participate in U.S. brand-identified promotions. Such criteria must ensure participation on an equitable basis by a representative cross section of the relevant U.S. agricultural industry. If FAS requests submission of criteria for approval, the program participant shall not use criteria disapproved by FAS after the program participant has been notified of FAS's disapproval.

(d) *Distribution of Information.* All program participants shall provide, on a timely basis, upon request of any entity in the United States, other than a representative of a foreign government,

any and all data developed and produced with project funds or contributions. Any fee charged in connection therewith may not exceed the costs incurred in assembling, duplicating and distributing the requested material.

(e) *Export Activities and Related Services.* (1) Neither program participants nor their affiliated organizations shall, during the term of the agreement, make export sales of agricultural commodities of the kind which are promoted, in whole or in part, with project funds.

(2) Neither the program participants nor affiliated organizations may assess fees for services provided to exporters in facilitating an export sale if the promotional activities intended to directly result in that specific export sale are supported, in whole or in part, by project funds. This paragraph applies to activities such as those involving discussions with potential buyers or the solicitation of specific sales including activities performed by sales teams and performed through trade fairs rather than activities of a more general promotional nature. This paragraph does not apply to checkoffs or membership dues based on commodity sales, when such assessments are a condition of membership in the participating organization.

(3) Participants in approved program activities shall not use the activities to promote private self-interests or conduct private business, except as members of sales teams or as part of a U.S. brand-identified promotion when such activities are specifically approved by FAS.

§ 1550.6 Compliance with program requirements.

(a) Within 30 days after the effective date of these regulations, program participants shall submit a written statement to the Administrator, FAS, that neither they, nor their affiliated organizations, will make export sales of agricultural commodities promoted, in whole or in part, with project funds during the term of any agreement between the program participant and FAS within the scope of section 1550.5. FAS may from time to time require program participants to submit certifications as to export sales for purposes of this part.

(b) In the event of noncompliance with any provision of these regulations, FAS may disallow a claim submitted under an agreement for expenses incurred after the effective date of these regulations or terminate the agreement in addition to any other remedy available to FAS.

§ 1550.7 Paperwork Reduction Act assigned number.

Information collection requirements contained in these regulations have been submitted to OMB for approval under control number 0551–0026. However, these requirements are not effective until final clearance is received from OMB.

Signed at Washington, DC on August 22, 1989.

F. Paul Dickerson,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 89–21419 Filed 9–12–89; 8:45 am]

BILLING CODE 3410–10–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–27231; File No. S7–25–89]

RIN 3235–AD80

Exemption of Certain Securities Issued by the Resolution Funding Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission today announced the adoption of emergency Rule 3a12–10 under the Securities Exchange Act of 1934 ("Exchange Act"). The rule defines certain securities issued by the Resolution Funding Corporation as "exempted securities" for purposes of those provisions of the Exchange Act that by their terms do not apply to an "exempted security" or to "exempted securities."

EFFECTIVE DATE: Rule 3a12–10 is effective upon publication in the **Federal Register.** Comments should be received on or before December 12, 1989.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–25–89. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L.D Colby, Chief Counsel, Edward L. Pittman, Assistant Chief Counsel, or John Polanin, Jr., Special Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW, Mail Stop 5–1, Washington, DC 20549, telephone (202) 272–2848.

SUPPLEMENTARY INFORMATION:

I. Background

The Financial Institutions Reform, Recovery and Enforcement Act (the "FIRRE Act") [1] was approved by Congress on August 4, 1989 and signed into law on August 9, 1989. The FIRRE Act provides for a comprehensive reform of the savings and loan industry, and establishes the Resolution Trust Corporation ("RTC") and the Resolution Funding Corporation ("Refcorp").[2] In addition, the FIRRE Act creates an Oversight Board of the RTC (the "Oversight Board"), whose function is to establish general policies for the oversee the activities of RTC.

RTC, which is specifically designated an instrumentality of the U.S. Government,[3] is charged with managing and resolving liquidation and other restructing matters relating to Federal Savings and Loan Insurance Corporation ("FSLIC") insured savings and loan associations that are or become insolvent during the period between January 1, 1989 and August 9, 1982. Under the management of a Directorate composed of government officials, Refcorp is a special purpose limited finance company formed to fund RTC's activities through the issuance of debt securities to the public, and nonvoting capital stock to Federal Home Loan Banks. Refcorp's obligations are designated as not being issued by an instrumentality of the U.S. Government for purposes of the federal securities laws.

Financing for the resolution of matters relating to insolvent savings and loan associations will be obtained from public and private sources, including $20 billion from the Department of the Treasury and $30 billion from public offerings of debt securities to be issued by Refcorp.[4] Interest and principal

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[1] Public Law No. 101–73, _____ Stat. _____ (August 9, 1989). All provisions discussed in this release are included in title V of the FIRRE Act (sections 501, 511, and 512), which amends the Federal Loan Bank Act, 12 U.S.C. 1421 *et seq.* ("FHLBA").

[2] *See generally* FHLBA sections 21A(b)(1)(A) and 21B(b) (establishing the entities, respectively).

[3] FHLBA section 21A(b)(1)(A).

[4] Refcorp expressly is authorized to issue "bonds, notes, debentures and similar obligations in an aggregate amount not to exceed $30,000,000,000." FHLBA section 21B(f)(1). Net proceeds received from the offerings by Refcorp will be transferred to RTC through Refcorp's purchase of RTC's nonvoting capital certificates, and will be used to finance the activities of RTC.

payable on Refcorp's obligations will be backed directly (with respect to interest) and indirectly (with respect to principal) by the Department of the Treasury. The funds to pay interest on Refcorp's debt securities will come first from any cash revenues generated by: (1) Earnings on Refcorp's assets not used for other enumerated purposes; (2) proceeds, if any, received by RTC from liquidating dividends and receivership claims; (3) payments by the Federal Home Loan Banks; and (4) proceeds received by the FSLIC Resolution Fund from sales of assets.[5] To the extent that funds from these sources are insufficient to pay interest on Refcorp's debt securities, the Secretary of the Treasury is directed to pay to Refcorp the amount of any shortfall.[6]

Repayment of principal on the debt securities will be funded through proceeds received on maturity of zero-coupon Treasury securities that are required to be purchased and held by Refcorp specifically for this purpose.[7] Under the FIRRE Act, Refcorp is authorized only to issue debt securities in amounts that do not exceed the principal amount of the zero-coupon securities that is payable at maturity.[8] These zero-coupon Treasury securities must be held in a separate account, the Principal Fund, to ensure payment of principal on Refcorp's debt securities.[9] Because of the linkage between Refcorp's obligations and the Principal Fund, principal payable on maturity of Refcorp's securities, while not backed by the full faith and credit of the U.S. Government,[10] will be completely backed by direct obligations of the U.S. Government.

II. Discussion

"Government securities," as defined in section 3(a)(42)(A) of the Exchange Act,[11] are "exempted securities" for purposes of the Exchange Act,[12] and therefore are not subject to the same reporting, registration, and regulatory provisions of the Exchange Act that apply to corporate securities.[13] Although the debt securities issued by Refcorp fall within the definition of "government securities" in section 3(a)(42)(A), they are not exempted securities for all purposes of the Exchange Act. The FIRRE Act provides that Refcorp's securities:

> [S]hall not be considered "exempted securities" within the meaning of section 3(a)(12)(A)(i) of the Securities Exchange Act of 1934, except that such obligations shall be considered to be exempted securities for purposes of section 15 of such Act.[14]

Thus, while persons effecting transactions in Refcorp's securities will not be required to register as broker-dealers under section 15(a) of the Exchange Act,[15] the securities, and persons selling and trading in the securities, would be subject to a host of other provisions of the Exchange Act that normally would not apply to government securities.

Among other provisions, underwriters selling the securities would be subject to the restrictions in section 11(d)(1) of the Exchange Act [16] preventing the extension of credit, by persons who are both brokers and dealers, during the distribution of a new issue of securities. A significant portion of the sales of new issues of government securities are financed by dealers through the use of repurchase agreements, which are regarded as an extension of credit. Applying section 11(d)(1) to Refcorp's securities seriously would limit the ability of non-bank dealers to participate in the offering of such securities. Similar problems would be raised under section 7(c) of the Exchange Act, governing the initial margin that may be extended on securities.[17] Moreover, absent an exemption from section 15A of the Exchange Act,[18] trades in Refcorp's securities also would be subject to rules of the National Association of Securities Dealers, Inc., including fair practice and advertising rules, that currently do not apply to sales of exempt government securities.

Secretary of the Treasury Nicholas F. Brady, as Chairman of the Oversight Board, has informed the Commission that the Oversight Board intends to list the securities on a national securities exchange.[19] Therefore, absent an exemption, Refcorp's securities would need to be registered under section 12(a) of the Exchange Act,[20] and would be subject to the reporting requirements of section 13(a) of the Exchange Act,[21] the proxy provisions of sections 14(a) and 14(c) of the Exchange Act,[22] and the Commission's rules and regulations thereunder.

Concurrent with the publication of this release, the Commission has issued an Order ("Order") [23] exempting Refcorp's securities from the registration requirements of section 5 of the Securities Act.[24] The Order was issued under explicit Securities Act exemptive authority provided by the FIRRE Act.[25] The FIRRE Act also carefully preserved for these securities the Commission's exemptive authority contained in section 3(a)(12)(A)(v),[26] thus, in the Commission's view, countenancing an exemption of Refcorp's securities from Exchange Act regulations applicable to non-exempt securities. In this

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[5] FHLBA section 21B(f)(2).

[6] FHLBA section 21B(f)(2)(E)(i). The FIRRE Act appropriates to the Secretary of the Treasury, for the fiscal year 1989 and all future fiscal years, the funds needed to satisfy the interest payments. *See* FHLBA section 21B(f)(2)(E)(iii).

[7] The zero-coupon Treasury securities are backed by the full faith and credit of the U.S. Government. *See* FHLBA section 21B(g)(2)(A). The Oversight Board represents that the zero-coupon securities will be issued directly to Refcorp, so that amounts and maturities can and will be matched exactly to the principal amounts and maturity dates on the corresponding Refcorp obligations at the time of issuance. Letter from Nicholas F. Brady, Secretary, Department of the Treasury, to David S. Ruder, Chairman, SEC (September 6, 1989) (the "Application"), at 5.

[8] FHLBA section 21B(f)(1).

[9] FHLBA section 21B(f)(3).

[10] *See* FHLBA section 21B(f)(10).

[11] 15 U.S.C. 78c(a)(42)(A). This section defines "government securities" to include "securities which are direct obligations of, or obligations guaranteed as to principal *or* interest by, the United States * * * *" (emphasis added). Because the Department of the Treasury is obligated to pay interest, Refcorp's debt securities are "government securities" under the Exchange Act.

[12] Section 3(a)(12)(A)(i) [15 U.S.C. 78c(a)(12)(A)(i)] provides that the term "exempted security" includes government securities as defined in section 3(a)(42) of the Exchange Act. Sections 3(a)(12)(A)(ii)–(iv) exempt additional securities.

[13] *See, e.g.*, Sections 7(f)(2)(B), 8(a), 11(d), and 12(a) [15 U.S.C. 78g (f)(2)(B), 78h(a), 78k(d) and 78*l*(a)]. Exempted securities remain subject to the antifraud provisions of the federal securities laws. *See, e.g.*, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77q(a)] and section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b–5 thereunder [17 CFR 240.10b–5].

[14] FHLBA section 21B(f)(8)(A)(ii).

[15] 15 U.S.C. 78*o*(a). They would be subject, however, to the provisions of section 15C of the Exchange Act [15 U.S.C. 78*o*–5] concerning government securities brokers and dealers.

[16] 15 U.S.C. 78k(d)(1).

[17] 15 U.S.C. 78g(c).

[18] 15 U.S.C. 78*o*–3.

[19] *See* Application at 7.

[20] 15 U.S.C. 78*l*(a).

[21] 15 U.S.C. 78m(a) ("Every issuer of a security registered pursuant to section 12 * * * shall file with the Commission * * * such annual reports * * * and such quarterly reports * * * as the Commission may prescribe.").

[22] 15 U.S.C. 78n(a) and 78n(c). Because Refcorp will not have a class of equity securities registered under section 12, however, compliance with sections 13(d) [15 U.S.C. 78m(d)], 13(e) [15 U.S.C. 78m(e)] and 16 [15 U.S.C. 78p] would not be required.

[23] *See* Securities Act Release No. 6844 (September 8, 1989).

[24] 15 U.S.C. 77e.

[25] FHLBA section 21B(f)(8).

[26] Section 3(a)(12)(A)(v) [15 U.S.C. 78c(a)(12)(A)(v) authorizes the Commission, by rule or regulation, consistent with the public interest and the protection of investors, to define securities as exempted securities in addition to those enumerated in sections 3(a)(12)(A)(i)–(iv) as exempted securities. The specific reference to section 3(a)(12)(A)(i) in the FIRRE Act indicates that Congress did not intend to impinge upon the Commission's ability to define exempted securities under section 3(a)(12)(A)(v).

connection, the Commission notes the colloquy of Senators Donald W. Riegle, Jr. and Jake Garn, urging the Commission to act quickly to assess the need for applying the registration provisions of the Securities Act and the Exchange Act to Refcorp's securities.[27]

More recently, the Oversight Board also has requested that the Commission exempt Refcorp's securities from certain provisions of the Exchange Act discussed above.[28] The Application states that unless the Exchange Act regulatory issues are resolved promptly, the Board believes that the interest costs of Refcorp's debt securities would increase substantially, and would ultimately increase the costs to taxpayers. The Board specifically noted that subjecting the Refcorp securities to sections 7, 8, and 11(d)(1) of the Exchange Act [29] would preclude the development of a market for repurchase transactions in the securities, restricting severely the ability of dealers to finance their positions.

III. Rule 3a12–10

As noted above, the debt securities of Refcorp are government securities within the meaning of section 3(a)(42) of the Exchange Act,[30] because payment of interest on the securities is assured by the Department of the Treasury. In addition, repayment of principal will be made through proceeds received on maturity from zero-coupon Treasury securities held by Refcorp solely for that purpose. Accordingly, the credit and investment risks to investors essentially are equivalent to those associated with direct obligations of the U.S. Government.

Because Refcorp will have no separate operations, and is not dependent on any cash generated by RTC, investors will be looking solely to the U.S. Government for repayment. The investment considerations pertaining to Refcorp's securities will be almost identical to those relating to securities issued or guaranteed directly by the Department of the Treasury. Moreover, Refcorp is subject to substantial government regulation of its securities. In light of the similarities between the securities issued by Refcorp and other government securities, the Commission believes that it would be inconsistent to apply different regulatory requirements to Refcorp's securities.

In order to regulate Refcorp's securities in an equivalent manner to securities issued by the U.S. Government or quasigovernmental agencies, the Commission has determined to exercise its authority in section 3(a)(12)(A)(v) of the Exchange Act [31] to adopt Rule 3a12–10 (the "Rule"), which defines the securities as exempted securities for purposes of those provisions of the Exchange Act that by their terms do not apply to an "exempted security" or to "exempted securities."

The Commission deems the adoption of the Rule to be consistent with the public interest and the protection of investors.

IV. Emergency Rulemaking

Commission rulemaking is done pursuant to the procedures specified in the Administrative Procedure Act ("APA"). Under sections 553 (b) and (c) of the APA,[32] notice of proposed rulemaking by the Commission generally must be given in the **Federal Register**, and interested persons must have the opportunity to submit written comments on the proposed rule. Under section 553(b)(3)(B) of the APA, however, the Commission may dispense with the notice and comment rulemaking process if it "for good cause finds * * * that notice and public procedure * * * are impracticable, unnecessary, or contrary to the public interest." [33]

The Application states that it is probable that Refcorp will be requested to provide funding for RTC in early October of 1989. The Oversight Board therefore requests that the Commission act by September 8, 1989 in order to assure that the orderly maintenance of savings and loan case resolutions and liquidity funding can continue. In addition, the legislative history of the FIRRE Act reveals that Congress intended the Commission to consider this matter promptly.[34]

In this instance, the Commission believes that affording notice of, and opportunity for comment on, the Rule would delay unnecessarily the raising of funds needed for the management and liquidation of insolvent savings and loan associations. In light of the important policy objectives embodied in the FIRRE Act, and the limited likelihood that the adoption of Rule 3a12–10 will affect any private parties negatively, the Commission finds that observing the normal notice and comment procedures under the APA to adopt the Rule are impracticable, unnecessary, and contrary to the public interest. Accordingly, Rule 3a12–10 will become effective immediately upon publication in the **Federal Register**.[35]

Although it is necessary for the Commission to use an expedited rulemaking procedure in order to comply with the Oversight Board's request, the Commission is interested in receiving comments on the Rule and would consider either amending or rescinding the Rule in light of the comments. Commentators are invited to express their views on any substantive differences between Refcorp's securities and those of other governmental issuers that may require Refcorp's securities to be treated differently for purposes of federal securities regulation.

V. Effects on Competition

Section 23(a)(2) of the Exchange Act [36] requires that the Commission, in adopting rules under the Exchange Act, consider the anticompetitive effects of such rules, if any, and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is of the view that Rule 3a12–10 will not result in any burden or competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

As stated above, the Commission believes that the exemptions provided to Refcorp's debt securities pursuant to Rule 3a12–10 will encourage the development of liquid markets for these securities and will apply equally to all participants in those markets. Although the Rule may reduce some of Refcorp's costs, and therefore provide a limited competitive advantage to Refcorp vis-a-vis issuers of non-exempted securities, the Commission believes that, among other things, the credit quality of these securities warrants their being treated in the same fashion as similar exempted government securities for purposes of Exchange Act regulation.[37]

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[27] 135 Cong. Rec. S10212(daily ed. August 4, 1989).

[28] *See* Applications at 9. A copy of the Application is contained in File S7–25–89.

[29] 15 U.S.C. 78g, 78h and 78k(d)(1), respectively.

[30] *See supra* note 11

[31] *See supra* note 26.

[32] 5 U.S.C. 553 (b) and (c).

[33] 5 U.S.C. 553(b)(3)(B).

[34] As discussed above, in a colloquy on the Senate floor, Senators Riegle and Garn agreed that the Commission should act quickly regarding the exempt status of the debt securities to be issued by Refcorp. *See supra* note 27.

[35] Because Rule 3a12–10 provides an exemption for Refcorp's securities from certain provisions of the Exchange Act, the APA does not require thirty days' notice prior to the Rule's effective date. *See* 5 U.S.C. 553(d)(1).

[36] 15 U.S.C. 78w(a)(2).

[37] The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) provides, with exceptions, that in connection with notice and comment rulemaking, agencies should prepare an Initial and Final Regulatory Flexibility Act Analysis examining the impact of the rule on small businesses. Because the Commission is using the expedited rulemaking procedures under section 553(b)(3)(B) of the APA, it has not prepared these analyses. Interested persons are invited, however, to submit views on any impact that the Rule may have on small businesses.

VI. List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Statutory Basis and Text of Amendments

Chapter II of title 17 of the Code of Federal Regulations is amended by adding § 240.3a12–10 as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w * * * § 240.3a12–10 also issued under 15 U.S.C. 78 b and c.

2. By adding § 240.3a12–10 as follows:

§ 240.3a12–10 Exemption of Certain Securities Issued by the Resolution Funding Corporation.

Securities that are issued by the Resolution Funding Corporation pursuant to section 21B(f) of the Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*) are exempt from the operation of all provisions of the Act that by their terms do not apply to any "exempted security" or to "exempted securities."

By the Commission.

Dated: September 8, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–21620 Filed 9–12–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960–AC07

Federal Old-Age, Survivors, and Disability Insurance; Supplemental Security Income for the Aged, Blind, and Disabled; Decisions by Administrative Law Judges in Cases Remanded by the Courts

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final rules amend the regulations to provide that, if a court remands a case to the Secretary and the Appeals Council subsequently remands the case to an administrative law judge (ALJ) for further proceedings and a new decision, the ALJ may issue a decision which will become the final decision of the Secretary after remand unless the Appeals Council assumes jurisdiction of the case. The regulations also provide that, if the party disagrees with the ALJ's decision, the party may file exceptions to the decision with the Appeals Council. Under the current regulations on cases remanded to the Secretary by a court for further administrative proceedings, the ALJ must issue a recommended decision, and the Appeals Council must review that decision and take further action in every case before the ALJ's recommended decision becomes the final decision of the Secretary after remand.

Under these final regulations, ALJ decisions fully or partially favorable to the party that are not reviewed by the Appeals Council on its own initiative will be effectuated on a more timely basis, i.e., parties will receive their benefits sooner because the Appeals Council will not have to act in every case. Final Agency action on those decisions that are not fully or partially favorable to the party will also be accomplished more expeditiously because these decisions will no longer require the Appeals Council to issue an adopting or modifying decision. Further, if a party does not file exceptions and the Appeals Council does not assume jurisdiction without exceptions being filed, the party is again entitled to judicial review.

EFFECTIVE DATES: These amendments are effective September 13, 1989, for all court remand cases, including all court remand cases pending before the Secretary on September 13, 1989, on which an ALJ has not yet issued a recommended decision.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1769.

SUPPLEMENTARY INFORMATION: On October 16, 1987, we published proposed rules to eliminate the requirement that ALJs issue recommended decisions in cases remanded by the courts (52 FR 38466). The Notice of Proposed Rulemaking (NPRM) provided that in these cases, the ALJ could issue an initial decision rather than a recommended decision unless the Appeals Council directed otherwise or the ALJ elected to issue a recommended decision. The NPRM further provided that the ALJ's decision would become the final decision of the Secretary unless (1) the party disagreeing with the decision filed written exceptions with the Appeals Council within a specified time period and the Appeals Council took jurisdiction at any time based on the filing or (2) if no written exceptions were filed, the Appeals Council took jurisdiction of the case within 60 days after the date of the ALJ's decision. The NPRM also provided that the Appeals Council, on assuming jurisdiction of any case, would have the authority to review any aspect or issue in the case.

We have analyzed the public comments we received from six commenters in response to the NPRM. Most of the comments favored eliminating the requirement that ALJs issue recommended decisions in court remand cases. Except for several clarifying changes discussed below, the final regulations are unchanged from the NPRM. Responses to the public comments appear below.

The Final Regulations

These final regulations amend the regulations to eliminate the requirement that ALJs issue recommended decisions in court remand cases. ALJs will issue decisions which will become the final decision of the Secretary after remand unless: (1) Within 30 days after receipt of the ALJ decision, the parties submit written exceptions to the Appeals Council objecting to the ALJ's decision or, within that period, submit a written request for an extension of time to file exceptions and, based on these exceptions, the Appeals Council assumes jurisdiction of the case; or (2) the Appeals Council decides to assume jurisdiction of the case within 60 days after the date of the ALJ's decision. If the Appeals Council assumes jurisdiction, it may affirm, modify, or reverse the ALJ's decision or it may remand the case to the ALJ for further consideration. If the Appeals Council affirms, modifies, or reverses the ALJ's decision, the Appeals Council's decision and not that of the ALJ will become the final decision of the Secretary after remand. Its review will not necessarily be limited to the issues in the ALJ's decision, but may encompass all of the issues in the case. When parties file written exceptions to an ALJ's decision, the Appeals Council may assume jurisdiction at any time. Certain court remand orders may specifically direct the Secretary to consider only a particular issue or to follow a procedure other than the procedures specified in these regulations. We may seek to have such orders vacated or modified. If an order is not vacated or modified, we will comply with it.

Pursuant to 20 CFR 404.901 and 416.1401, we presume that the parties receive the ALJ's decision within 5 days of the date shown on the notice of the decision. New §§ 404.984(b) and

416.1484(b) allow the parties 30 days after receipt of the ALJ's decision to file written exceptions with the Appeals Council. Further, these sections provide that a 30-day extension for filing exceptions will be granted if the party makes the extension request within the 30-day period. This provision allows more time than the current regulations, which provide a 20-day period for the party to file briefs or other written statements with the Appeals Council when an ALJ issues a recommended decision.

If a party files written exceptions objecting to the ALJ's decision, the Appeals Council will consider the party's objections and all of the issues in the case, and take one of three actions: issue a new decision; remand the case to an ALJ for further proceedings; or issue a notice to the party explaining why it has concluded that the ALJ's decision is correct.

Under these regulations, if the Appeals Council decides to assume jurisdiction and no exceptions are filed, it will send a notice to all parties and their representatives within 60 days after the date of the ALJ's decision. The notice will inform them of the Appeals Council's proposed action and provide an opportunity to file a brief or other written statement with the Appeals Council relating to the proposed action.

If the parties do not file exceptions and the Appeals Council does not assume jurisdiction of the case on its own initiative, we will immediately effectuate the matters which the ALJ's decision resolved. ALJ's do not always decide all factors involved in a case. When they do not do so, the appropriate component of the Social Security Administration or the Health Care Financing Administration will make determinations on pertinent matters not addressed in the ALJ's decision. If these determinations are not fully favorable to the parties, we will advise the parties of the determinations and their right to request us to reconsider the determinations.

If an ALJ issues a decision, that decision will be the final decision of the Secretary after remand if: (1) The parties or their representatives do not file written exceptions disagreeing with the decision within the specified time period or any extension of time they may receive; and (2) the Appeals Council does not assume jurisdiction of the case.

Under these regulations, an ALJ may choose to issue a recommended decision, or the Appeals Council may order the ALJ to issue a recommended decision. In any case in which the ALJ issues a recommended decision, the parties will continue to have the right to file briefs or other written statements with the Appeals Council within 20 days of the ALJ's recommended decision and the Appeals Council will issue the final decision. 20 CFR 404.977(d) and 416.1477(d).

Public Comments and Responses

We received comments from attorneys engaged in the private practice of law, legal aid attorneys, and two city/state legal advocacy organizations. We have carefully considered all of the comments we received. For ease of reference, we have grouped comments according to the issues raised.

Comment: Definition of "at any time"

One commenter expressed concern about proposed §§ 404.984(b)(3) and 416.1484(b)(3), which state that if the party files exceptions, the Appeals Council may assume jurisdiction at any time, even after the 60-day time limit which applies if no exception has been filed. The commenter asked "what does 'at any time' mean?"

Response

"At any time" means that, if the party files timely written exceptions, the regulations do not limit the time within which the Appeals Council must assume jurisdiction of the case. Because the party may have up to 60 days to file exceptions (including the 30-day extension upon request), the Appeals Council may not receive the exceptions until its 60-day period to assume jurisdiction on its own initiative has elapsed. Once the Appeals Council receives exceptions, it must have sufficient time to consider them and to determine whether or not to assume jurisdiction. Although the regulation specifies no time limit, the Appeals Council will, as in all instances, handle the case as expeditiously as possible.

Comment: Relationship to Own Motion Review in § 404.969

One commenter stated that this proposed regulation directly contravenes § 404.969 which provides a 60-day period after the issuance of an ALJ decision for the Appeals Council to exercise its authority to review the decision on its own motion.

Response

The final regulations at §§ 404.984 and 416.1484 govern the Appeals Council's authority to review ALJ decisions in cases remanded by the Court. Sections 404.969 and 416.1469 are not applicable to ALJ decisions issued in court remand cases. In both situations, however, if the Appeals Council wishes to assume jurisdiction on its own initiative, it must do so within 60 days of the ALJ decision.

Comment: Considering Other Issues After 60 Days

With regard to the Appeals Council's authority to consider issues after the 60-day period for review on its own initiative has ended, a commenter asserted that the proposed rule contravened numerous court decisions which have held the Appeals Council to 60 days within which to notify parties of its intent to review issues other than those raised by the party.

Response

We do not agree with the commenter's reading of the case law that was cited in support of this observation. We believe that the proposed rule and the final rule fully inform the parties about the Appeals Council's authority to consider and review issues other than those raised by the party, and in so doing the rules are consistent with the court decisions cited by the commenter. By making the Appeals Council's authority explicit in these regulations, a party will have notice that the Appeals Council may consider and review any issues(s) relating to the claim, whether or not the party raises them in either the judicial or administrative proceedings.

Comment: Notice to Parties

One commenter stated that when the Appeals Council assumes jurisdiction of the case it should give the party notice of any issues it will consider that were not raised in the party's exceptions.

Response

Under the final rules, the Appeals Council may consider issues the party did not raise in the exceptions, and, as a matter of policy, issues the ALJ decided in the party's favor or issues the ALJ did not decide. The Appeals Council will notify the party and his or her representative, and provide an opportunity for comment on the proposed action when it assumes jurisdiction.

Comment: Chilling Effect on Filing Exceptions to Partially Favorable Decisions

Another commenter stated that the proposed regulations would have a chilling effect on the filing of exceptions to partially favorable decisions since, if a party files exceptions to those parts of the decision with which he or she disagrees, the Appeals Council will also review those parts of the decision which are favorable to the claimant.

Response

We do not agree with this comment and believe that the exceptions process will enable the party to obtain a more comprehensive administrative decision. The Appeals Council acts on behalf of the Secretary in ensuring that in any case in which it assumes jurisdiction, the final decision of the Secretary is correct in all respects, and in cases remanded from the courts, the final decision after remand comports fully with the court's order. Thus, the Appeals Council must have the authority to consider all of the issues in a case if it assumes jurisdiction. Likewise, the ALJ must have the authority to consider all of the issues if he or she is to make a final decision. We have amended § 404.983 and § 416.1483 to make clear this authority.

Comment: Effect on Judicial Review

One commenter noted that the NPRM was not clear as to the effect of a party's failure to file exceptions and recommended that the rule be clarified so that the party's failure to file written exceptions would not be viewed as a waiver of the right to judicial review.

Response

Because these regulations deal with decisions of ALJs and appeals of those decisions to the Appeals Council, we do not believe it is appropriate in these rules to discuss the effects on judicial review of the claimant's failure to file exceptions with the Appeals Council. Because courts in most instances retain jurisdiction of civil actions when they remand them to the Secretary, we cannot bar a person's right to return to that court. However, the Secretary has the right to prescribe the procedures under which the administrative review will be conducted. We have required the filing of exceptions for the claimant to obtain Appeals Council review because we believe that filing exceptions will help both the claimant and the Secretary to focus accurately and quickly on the issues still in dispute.

Comment: Time for Effectuation

One commenter expressed the belief that the proposed regulations would lengthen the time period for effectuation of partially favorable decisions, if a party filed exceptions.

Response

Partially favorable ALJ decisions in court remand cases will no longer require a decision by the Appeals Council before they can be effectuated. Thus, these regulations will in fact significantly reduce the time required to effectuate partially favorable ALJ decisions. Consideration of exceptions to such decisions by the Appeals Council will be undertaken after the decision is effectuated.

Comment: Retain Recommended Decisions

We received only one comment objecting to eliminating the requirement that ALJs issue recommended decisions in court remand cases. Noting that the proposed regulations provide for review by the Appeals Council only under certain circumstances, the commenter stated that the current regulations permit all parties to exercise their right to appeal to the fullest extent.

Response

As noted previously, eliminating the requirement for recommended decisions in all court remands will allow most favorable ALJ decisions to be effectuated more promptly. When a party disagrees with the ALJ's decision, the regulations permit the party to file exceptions with the Appeals Council and require the Appeals Council to respond to the exceptions. The new regulations do not diminish any right to appeal the ALJ decision issued on court remand.

Comment: Impact on Fee Petition Processing

One commenter inquired who will handle fee petitions for representatives in court remand cases, noting that staff in the Attorney Fee Branch of the Appeals Council currently handles fee petitions in these cases. He commented that, if the Appeals Council is no longer issuing the final decision in these cases, it would seem appropriate to transfer this function to the ALJs.

Response

SSA will continue its current policy that provides for the ALJ who issues the final decision to evaluate the request for approval of a fee. Thus, if an ALJ decision in a court remand case becomes the final decision of the Secretary after remand, the ALJ will evaluate the request for approval of a fee. If the Appeals Council issues the final decision, the Appeals Council will evaluate the fee request and determine the fee.

Comment: New Civil Action Required

One commenter believes it is confusing to call the "new" decision, i.e., the ALJ or Appeals Council decision issued after a court remand, "the final decision of the Secretary," since it suggests that a new civil action must be filed to obtain judicial review.

Response

We agree that calling the ALJ or Appeals Council decision that is made after a court remand "the final decision of the Secretary" is confusing and have changed the term to "the final decision of the Secretary after remand." We believe that referring to the decision issued after remand as the final decision of the Secretary after remand is the most accurate description, since it is the Agency's final determination of the issues in dispute. We do not believe using this new term will mislead a claimant, whose case has been remanded by a court, into believing that the claimant must file a new civil action to obtain judicial review. Notices accompanying the ALJ decisions and the Appeals Council's responses to exceptions will clearly set forth the claimant's rights in this regard.

Cases Affected

The procedures set forth in these regulations apply to cases under titles II and XVI of the Social Security Act. They also apply to cases involving remands by the courts of appeals arising under titles XI and XVIII of the Act, involving rights and benefits under the Medicare program. Regulations governing these appeals incorporate the regulations in 20 CFR part 404, Subpart J by reference. Therefore, the amendments to 20 CFR part 404 Subpart J set forth in the final regulations would apply to these appeals.

These procedures will not apply to appeals under 42 CFR Part 498. That part primarily governs appeals by providers of services and other entities as to their participation in the Medicare program. Under that part, the ALJ is not required to issue a recommended decision in a court remand case unless the Appeals Council so directs. Thus, that part is consistent with the procedures to be implemented in these regulations.

These procedures will also not apply to appeals pursuant to 20 CFR part 410, Subpart F. That subpart sets forth the procedure for appeals in claims under the Federal Coal Mine Health and Safety Act, Title IV, Black Lung Benefits, for which the Social Security Administration still has jurisdiction. We believe the existing procedures, considering that there are few cases, are appropriate. Thus, we are not changing the procedures for issuing decisions in court remand cases involving Black Lung benefits.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will result in negligible administrative costs and savings. It will result in about $1 million administrative cost savings a year because it will reduce the number of workyears required to review ALJ decisions in court remand cases. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

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

(Catalog of Federal Domestic Assistance Program Nos. 13.773 and 13.774, Medicare; 13.802-13.805, Social Security; and 13.807 Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old Age, Survivors and Disability Insurance.

20 CFR Part 416

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

Dated: January 6, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: August 4, 1989.

/s/ Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Subpart J of Part 404 and Subpart N of Part 416 of 20 CFR Chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

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

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

2. Paragraph (b) of § 404.953 is revised to read as follows:

§ 404.953 The decision of an administrative law judge.

* * * * *

(b) Recommended decision. Although an administrative law judge will usually make a decision, he or she may send the case to the Appeals Council with a recommended decision where appropriate. The administrative law judge will mail a copy of the recommended decision to the parties at their last known addresses and send the recommended decision to the Appeals Council.

3. Paragraphs (d) and (e) are revised and a new paragraph (f) is added to § 404.955 to read as follows:

§ 404.955 The effect of an administrative law judge's decision.

* * * * *

(d) The expedited appeals process is used;

(e) The decision is a recommended decision directed to the Appeals Council; or

(f) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in § 404.984.

4. An undesignated center heading is added immediately before § 404.983 and new § 404.984, and § 404.983 is revised to read as follows:

Court Remand Cases

§ 404.983 Case remanded by a Federal court.

When a Federal court remands a case to the Secretary for further consideration, the Appeals Council, acting on behalf of the Secretary, may make a decision, or it may remand the case to an administrative law judge with instructions to take action and issue a decision or return the case to the Appeals Council with a recommended decision. If the case is remanded by the Appeals Council, the procedures explained in § 404.977 will be followed. Any issues relating to your claim may be considered by the administrative law judge whether or not they were raised in the administrative proceedings leading to the final decision in your case.

5. A new § 404.984 is added to read as follows:

§ 404.984 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.

(a) *General.* In accordance with § 404.983, when a case is remanded by a Federal court for further consideration, the decision of the administrative law judge will become the final decision of the Secretary after remand on your case unless the Appeals Council assumes jurisdiction of the case. The Appeals Council may assume jurisdiction based on written exceptions to the decision of the administrative law judge which you file with the Appeals Council or based on its authority pursuant to paragraph (c) of this section. If the Appeals Council assumes jurisdiction of your case, any issues relating to your claim may be considered by the Appeals Council whether or not they were raised in the administrative proceedings leading to the final decision in your case or subsequently considered by the administrative law judge in the administrative proceedings following the court's remand order. The Appeals Council will either. make a new, independent decision based on the entire record that will be the final decision of the Secretary after remand or remand the case to an administrative law judge for further proceedings.

(b) *You file exceptions disagreeing with the decision of the administrative law judge.* (1) If you disagree with the decision of the administrative law judge, in whole or in part, you may file exceptions to the decision with the Appeals Council. Exceptions may be filed by submitting a written statement to the Appeals Council setting forth your reasons for disagreeing with the decision of the administrative law judge. The exceptions must be filed within 30 days of the date you receive the decision of the administrative law judge or an extension of time in which to submit exceptions must be requested in writing within the 30-day period. A timely request for a 30-day extension will be granted by the Appeals Council. A request for an extension of more than 30 days should include a statement of reasons as to why you need the additional time.

(2) If written exceptions are timely filed, the Appeals Council will consider your reasons for disagreeing with the decision of the administrative law judge and all the issues presented by your case. If the Appeals Council concludes that there is no reason to change the decision of the administrative law judge, it will issue a notice to you addressing your exceptions and explaining why no change in the decision of the administrative law judge is warranted. In this instance, the decision of the administrative law judge is the final decision of the Secretary after remand.

(3) When you file written exceptions to the decision of the administrative law judge, the Appeals Council may assume

jurisdiction at any time, even after the 60-day time period which applies when you do not file exceptions. If the Appeals Council assumes jurisdiction, it will make a new, independent decision based on its consideration of the entire record affirming, modifying, or reversing the decision of the administrative law judge or remand the case to an administrative law judge for further proceedings, including a new decision. The new decision of the Appeals Council is the final decision of the Secretary after remand.

(c) *Appeals Council assumes jurisdiction without exceptions being filed.* Any time within 60 days after the date of the decision of the administrative law judge, the Appeals Council may decide to assume jurisdiction of your case even though no written exceptions have been filed. Notice of this action will be mailed to all parties at their last known address. You will be provided with the opportunity to file briefs or other written statements with the Appeals Council about the facts and law relevant to your case. After the briefs or other written statements have been received or the time allowed (usually 30 days) for submitting them has expired, the Appeals Council will either issue a final decision of the Secretary affirming, modifying, or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision.

(d) *Exceptions are not filed and the Appeals Council does not otherwise assume jurisdiction.* If no exceptions are filed and the Appeals Council does not assume jurisdiction of your case, the decision of the administrative law judge becomes the final decision of the Secretary after remand.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

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

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

2. paragraph (c) of § 416.1453 is revised to read as follows:

§ 416.1453 The decision of the administrative law judge.

* * * * *

(c) *Recommended decision.* Although an administrative law judge will usually make a decision, he or she may send the case to the Appeals Council with a recommended decision where appropriate. The administrative law judge will mail a copy of the recommended decision to the parties at their last known addresses and send the recommended decision to the Appeals Council.

3. Paragraphs (d) and (e) are revised and a new paragraph (f) is added to § 416.1455 to read as follows:

§ 416.1455 The effect of an administrative law judge's decision.

* * * * *

(d) The expedited appeals process is used;

(e) The decision is a recommended decision directed to the Appeals Council; or

(f) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in § 416.1484.

4. An undesignated center heading is added immediately before § 416.1483 and new § 416.1484, and 416.1483 is revised to read as follows:

Court Remand Cases

§ 416.1483 Case remanded by a Federal court.

When a Federal court remands a case to the Secretary for further consideration, the Appeals Council, acting on behalf of the Secretary, may make a decision, or it may remand the case to an administrative law judge with instructions to take action and issue a decision or return the case to the Appeals Council with a recommended decision. If the case is remanded by the Appeals Council, the procedures explained in § 416.1477 will be followed. Any issues relating to your claim may be considered by the administrative law judge whether or not they were raised in the administrative proceedings leading to the final decision in your case.

5. A new § 416.1484 is added to read as follows:

§ 416.1484 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.

(a) *General.* In accordance with § 416.1483, when a case is remanded by a Federal court for further consideration, the decision of the administrative law judge will become the final decision of the Secretary after remand on your case unless the Appeals Council assumes jurisdiction of the case. The Appeals Council may assume jurisdiction based on written exceptions to the decision of the administrative law judge which you file with the Appeals Council or based on its authority pursuant to paragraph (c) of this section. If the Appeals Council assumes jurisdiction of your case, any issues relating to your claim may be considered by the Appeals Council whether or not they were raised in the administrative proceedings leading to the final decision in your case or subsequently considered by the administrative law judge in the administrative proceedings following the court's remand order. The Appeals Council will either make a new, independent decision based on the entire record that will be the final decision of the Secretary after remand or remand the case to an administrative law judge for further proceedings.

(b) *You file exceptions disagreeing with the decision of the administrative law judge.* (1) If you disagree with the decision of the administrative law judge, in whole or in part, you may file exceptions to the decision with the Appeals Council. Exceptions may be filed by submitting a written statement to the Appeals Council setting forth your reasons for disagreeing with the decision of the administrative law judge. The exceptions must be filed within 30 days of the date you receive the decision of the administrative law judge or an extension of time in which to submit exceptions must be requested in writing within the 30-day period. A timely request for a 30-day extension will be granted by the Appeals Council. A request for an extension of more than 30 days should include a statement of reasons as to why you need the additional time.

(2) If written exceptions are timely filed, the Appeals Council will consider your reasons for disagreeing with the decision of the administrative law judge and all the issues presented by your case. If the Appeals Council concludes that there is no reason to change the decision of the administrative law judge, it will issue a notice to you addressing your exceptions and explaining why no change in the decision of the administrative law judge is warranted. In this instance, the decision of the administrative law judge is the final decision of the Secretary after remand.

(3) When you file written exceptions to the decision of the administrative law judge, the Appeals Council may assume jurisdiction at any time, even after the 60-day time period which applies when you do not file exceptions. If the Appeals Council assumes jurisdiction, it will make a new, independent decision based on its consideration of the entire record affirming, modifying, or reversing the decision of the administrative law judge or remand the case to an administrative law judge for further proceedings, including a new decision. The new decision of the Appeals Council is the final decision of the Secretary after remand.

(c) *Appeals Council assumes jurisdiction without exceptions being filed.* Any time within 60 days after the date of the decision of the administrative law judge, the Appeals Council may decide to assume jurisdiction of your case even though no written exceptions have been filed. Notice of this action will be mailed to all parties at their last known address. You will be provided with the opportunity to file briefs or other written statements with the Appeals Council about the facts and law relevant to your case. After the briefs or other written statements have been received or the time allowed (usually 30 days) for submitting them has expired, the Appeals Council will either issue a final decision of the Secretary affirming, modifying, or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision.

(d) *Exceptions are not filed and the Appeals Council does not otherwise assume jurisdiction.* If no exceptions are filed and the Appeals Council does not assume jurisdiction of your case, the decision of the administrative law judge becomes the final decision of the Secretary after remand.

POSTAL SERVICE

39 CFR 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 32 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1. All of the revisions are minor, editorial, or clarifying.

EFFECTIVE DATE: September 17, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268–2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 32, dated September 17, 1989. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 32 covers all of the changes.

Summary of Changes

Chapter 1

Section 122.15, Return Address, is revised to clarify that the Postal Service will use the return address on a mailpiece bearing a mailer's ancillary service endorsement in determining the place where the mailer will accept and pay for mail rendered the ancillary service requested. (PB 21732, 7–6–89)

Exhibits 122.63a-r are changed to reflect the Florida ZIP Code changes previously announced. Compliance with these revisions is mandatory by September 17, 1989. (PB 21731, 6–29–89)

Exhibits 122.63e, 122.63o, are revised to reflect processing changes for ZIP Code areas 228, 229, 324–326, 365–366, 439 and 457. (PB 21726, 5–25–89)

Section 124.125, *Other laws and Regulations,* is revised to include a reference to 18 U.S.C. 2512 regarding the mailing of surveillance devices. (PB 21731, 6–29–89)

Sections 125 and 126 are amended to be in concert with current mailability and Department of State regulations. (PB 21729,6–15–89)

Sections 136.754 and 136.954, *Makings,* are revised to permit mailers who drop ship mail via Express Mail or Priority Mail to inform their customers that their mail was drop shipped by those services. (PB 21728, 6–8–89)

Section 137.15, *Forwarding Mailing Records for Franked Mail,* reflects changes in administrative and reporting responsibilities in the franked mail sampling system. (PB 21733, 7–13–89)

Section 137.252 is updated with several new agencies and revised business reply mail numbers. Some agencies have changed from sampling number to direct accountability.

Section 144.112 is revised to permit metered reply postage on all Express Mail shipments. (PB 21732, 7–6–89)

Sections 144.2, 144.3, 144.6, and 144.9 are revised to reflect changes in postage meter procedures and responsibilities. (PB 21741, 9–7–89)

Section 145.8 is revised to standardize the procedures for an Optional Procedure Mailing System. (PB 21742, 9–14–89)

Section 146.132a is revised to clarify how to handle refused, shortpaid First-Class Mail. (PB 21731, 6–29–89)

Exhibit 159.151a is revised to allow an authorized abbreviation for a First-Class Mail endorsement where space does not permit the full endorsement: *Forward and Address Correction Requested.* (PB 21731, 6–29–89)

Chapter 3

Section 322, *Postal Cards and Postcards,* is revised to (1) permit postcards to be formed of two pieces of paper that are permanently and uniformly bonded together; (2) permit paper labels to be permanently affixed to the back or the left portion of the address side; and (3) permit limited use of stickers on double postcards. (PB 21732, 7–6–89)

Section 392.1, *Return,* is revised to clarify how to handle refused, shortpaid First-Class Mail. (PB 21731, 6–29–89)

Chapter 4

Section 425.8, is revised to eliminate requirements for publishers of second-class publications to file Forms 15 and 15–E. (PB 21735, 7–27–89)

Section 429.31g(2) is revised to clarify what may be placed on the front of a label carrier for a second-class publication when it is completely enclosed in a plastic wrapper (polybag). (PB 21729, 6–15–89)

Chapter 6

Section 643.2, *Revocation for Nonuse,* is revised to include instructions advising postmasters to notify the General Manager, Rates and Classification Center, of the names of organizations that have not made use of their special rate privileges for at least 2 years. (PB 21729, 6–15–89)

Chapter 7

Section 792.1, *Endorsed and Unendorsed Pieces,* is revised to clarify procedures for return on undeliverable fourth-class mail. (PB 21731, 6–29–89)

Minor nonsubstantive changes are found in: 144.1, 144.3, 144.9, Exhibit 159.151a, 263.2, Exhibit 463.24, 623.51, 667.675, 941.2, and others.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201 -3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter	Dated	FEDERAL REGISTER publication
32	September 17, 1989.....	54 FR * * *

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 89-21434 Filed 9-12-89; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 233

Adding Child Pornography to the List of Offenses for Which Rewards May Be Paid for Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In 1988 the Postal Service added to the offenses listed on Notice 96, *Notice of Reward*, for which rewards will be paid for information on the offense of child pornography. The purpose of this final rule is to conform the regulations in title 39, Code of Federal Regulations, with that action.

EFFECTIVE DATE: September 12, 1989.

FOR FURTHER INFORMATION CONTACT: H.J. Bauman, (202) 268-4415.

SUPPLEMENTARY INFORMATION:

List of Subjects in 39 CFR Part 233

Crime, Postal Service

In consideration of the foregoing, 39 CFR 233 is amended as set forth below.

PART 233—[AMENDED]

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401-3422; 18 U.S.C. 2254.

2. In § 233.2, add new paragraph (b)(1)(ix) as follows:

§ 233.2 Circulars and rewards.

* * * * *

(b) * * *

(1) * * *

(ix) Mailing or receiving through the mail any visual depiction involving the use of a minor engaging in sexually explicit conduct.

* * * * *

3. In the Note to § 233.2, after the offense entitled "Burglary of Post Office, $5,000.", add the following:

Child Pornography, $2,500. The mailing or receiving through the mail of any visual depiction involving the use of a minor engaging in sexually explicit conduct.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-21435 Filed 9-12-89; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3644-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In a July 7, 1988, **Federal Register** (53 FR 25509), notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is a compliance date extension and a relaxation of emission limits of Navistar's (formerly called International Harvester) one surface coating line at its Body plant and nine lines at its Assembly plant. Both plants are located in Springfield, Clark County, Ohio.

In today's Final Rulemaking, USEPA is disapproving this SIP revision because the State has not demonstrated that Navistar's compliance plan is expeditious and that it is technically or economically infeasible for Navistar to meet the volatile organic compounds (VOC) emission limits contained in the existing SIP.

EFFECTIVE DATE: This final rulemaking becomes effective on October 13, 1989.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, (312) 886-6031, before visiting the Region V office.)

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

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, Columbus, Ohio 43216.

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

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On March 10, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a site-specific revision to the Ohio ozone SIP for volatile organic compound (VOC) emissions from Navistar's one surface coating line at its Body plant and nine lines at its Assembly plant. Both plants are located in Springfield, Clark County, Ohio. Clark County is designated nonattainment for the pollutant ozone under section 107 of the Clean Air Act (Act) (40 CFR 81.336).[1]

I. Emission Limits

The two Navistar plants contain surface coating lines that are used to paint truck cabs, hoods, chassis, and miscellaneous metal parts. Under the existing federally approved SIP, each miscellaneous metal parts and products surface coating line is subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745-21-09(U). OAC 3745-21-09(U)(1)(a)(iii) limits the VOC content of an extreme performance coating to 3.5 pounds of VOC per gallon (lbs of VOC/gal) of coating, excluding water. OAC Rule 3745-21-04(C)(28) requires compliance with this limit by December 31, 1982. USEPA approved these rules and others as meeting the reasonably available control technology (RACT) [2] requirements of part D and the Act on June 29, 1982 (47 FR 28097).

Navistar's nine lines at its Assembly plant (P001-P004, P007-P009, R004 and R005) and one line at its Body plant (K001) are currently being operated in violation of OAC Rule 3745-21-09(U) for surface coating of miscellaneous metal parts and products. In lieu of the requirements mentioned above, OEPA

[1] Because of the proximity of Clark County to Dayton, Clark County emissions and emission reductions were included as an integral part of the greater Dayton ozone demonstration area SIP. USEPA approved Ohio's attainment demonstration for the greater Dayton area including Clark County, on October 31, 1980 (45 FR 72122), because the State's plan for the area as a whole demonstrated the attainment and maintenance for the ozone standard there by December 31, 1982. Violations of the ozone standard were recorded in the Dayton area subsequent to 1982.

[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

has submitted for Navistar as a revision to the Ohio SIP (1) a compliance date extension until December 31, 1987, and (2) for seven of the lines, a relaxation from the RACT based limits to the VOC content of coatings currently in use on these lines. The coatings currently used are acrylic enamel, urethane, and chassis coating with VOC contents of 4.86, 4.66, and 3.66 lbs of VOC per gallon of coating, excluding water, respectively.

II. Compliance Date Extension

The OEPA requested a compliance date extension to December 31, 1987, for lines K001, P001, and P002. By that date, the lines will be shut down and replaced with new coating lines which will be in compliance with OAC Rule 3745-21-09(U). In order for a compliance date extension to be approvable, the request must comply with USEPA's criteria. The extension for Navistar's surface coating lines does not satisfy these criteria because the OEPA did not adequately research the compliance status of other similar sources to determine if compliance by the original deadline was reasonable. As explained below, Illinois has documentation that complying coatings are available (and in use) for the heavy duty off highway vehicle manufacturing industry. In addition, USEPA policy requires the State to demonstrate that the extension will not interfere with the timely attainment and maintenance of the ozone standard and, where relevant "reasonable further progress" (RFP) towards timely attainment. This would generally be done by comparing the margin for attainment predicted by the approved ozone attainment demonstration, and the increased emissions that would result under the extension. However, if the State or USEPA believes that there has been a substantial change in the inventory since the ozone SIP was approved so that the margin of attainment has changed significantly, a revised demonstration in support of the revision request is required. Such a demonstration would be necessary in areas which purported to demonstrate attainment by 1982, but for which post 1982 monitoring data are indicating exceedances of the ozone standard. Because Navistar is located in such an area, a revised demonstration of attainment for the Dayton area would be required before the compliance date extension can be approved.

III. Status of Ozone Attainment Demonstration-Clark County

Navistar's Body and Assembly plants are located in Clark County, which is designated nonattainment for the ozone NAAQS, and which is a part of the greater Dayton nonattainment area for ozone. Navistar provided an air quality demonstration for the proposed revision which was based on the 1979 USEPA approved ozone SIP for the Dayton area. In order to get approval of a source-specific SIP revision, a State must demonstrate that the revision will not interfere with expeditious attainment and maintenance of the ozone standard and reasonable further progress toward attainment. Dayton's 1979 ozone SIP was approved for attainment of the standard by the end of 1982 and maintenance thereafter. However, because violations have been measured in 1983 and 1984, and there have been more recent exceedances of the ozone standard (as late as 1987), USEPA cannot determine whether the SIP is maintaining the ozone standard. Ohio cannot, therefore, rely on the 1979 demonstration of attainment to show that the revision will not interfere with continued maintenance of the ozone standard. While USEPA has not chosen to call for a SIP revision because of a substantially inadequate plan for this area, any relaxations, such as the one addressed in this notice, must be accompanied by a persuasive demonstration that the area will continue to maintain the ozone standard for the foreseeable future despite the relaxation. Since the State has not made this demonstration, USEPA cannot approve this relaxation.

USEPA is disapproving this variance as a SIP revision because (1) the State has not shown that the granting of the variance will not interfere with expeditious attainment of the ozone NAAQS in the area; (2) the State did not demonstrate that Navistar's compliance plan is expeditious; and (3) the State has not demonstrated that the current emission limits for Navistar are technically or economically infeasible and that the proposed limits are RACT for that particular source.

IV. Proposed SIP Revision

In a July 7, 1988, Federal Register (53 FR 25509) notice, USEPA proposed to disapprove a revision to Ohio's ozone SIP, which would allow for a compliance date extension and for a relaxation of emission limits for Navistar's one surface coating line at its Body plant and nine lines at its Assembly plant. USEPA proposed to disapprove this SIP revision because the State has not demonstrated that Navistar's compliance plan is expeditious and that the present emission limits for Navistar in the SIP are technically or economically infeasible.

V. Comments and USEPA's Response

Comments on this notice of proposed rulemaking were received from the OEPA, the (Dayton) Regional Air Pollution Control Agency (RAPCA), the Motor Vehicle Manufacturer's Association (MVMA), and Navistar. These comments and USEPA's response are provided below.

A. Expeditiousness of the Compliance Plan

1. Comment

OEPA and RAPCA stated in their comments that Navistar's compliance plan is expeditious because the operations performed on lines K001, P001 and P002 (for which compliance date extensions were requested) are being transferred to new, well-controlled sources and the schedule is consistent with the schedule contained in the permit to install for the new sources. Navistar made the same comment and added that it has shut down more lines than it initially promised to the State of Ohio.

USEPA's Response. USEPA's May 2, 1987, Technical Support Document (TSD) stated that "for this compliance date extension to be approved, [Navistar] must demonstrate that it proceeded expeditiously to develop, and implement its compliance plan from the time the regulations were adopted to the present with no significant periods of inaction. [Navistar] has provided no information concerning the development of this compliance plan." Navistar still has not provided any information concerning its compliance plan. The earliest indication of Navistar's intent to replace old lines with new lines is the November 6, 1985, Permit to Install. This permit was issued nearly three years after Navistar was required to be in compliance with OAC rule 3745-21-09(U). No evidence has been provided that the new lines could not have been installed sooner.

Although Navistar has indicated that it has shut down more lines than it originally intended, it has not shut down lines K001, P001, and P002 as required by the variances.

2. Comment

OEPA and RAPCA commented that the compliance status of two other medium and heavy duty truck assembly plants was examined at the time Navistar applied for the variance, and it was determined that neither was using coatings capable of complying with OAC Rule 3745-21-09(U).

USEPA's Response. OEPA's previous submittals contained no evidence that

the State examined the compliance status of other sources. Only one of the two sources examined by OEPA and RAPCA is subject to a rule similar to OAC Rule 3745–21–09(U). Although this source also requested a compliance date extension until December 31, 1987, for its "specialty" topcoats, the majority of its remaining operations were in compliance or expected to be in compliance by April 15, 1985. It should be noted that the extensions were not approved by USEPA.

In addition, OEPA has not provided a complete survey of the availability of complying coatings and the compliance status of other similar sources. The State should provide evidence that it made all reasonable efforts to determine the availability of complying coatings or other kinds of control, as appropriate. Examples of these efforts include, but may not be limited to examining information that is or should be reasonably available to the State including whether sources operating in the State that were in an industry comparable to the source are using complying coatings, or other kinds of controls, that the source could adopt. Reasonable efforts also include seeking all information that is reasonably available to the source requesting the SIP revision. This would include contacting suppliers that the source uses or could use, to determine if they have, or could develop, complying coatings or other controls. In addition, the State or source should contact regional or national trade associations for the industry, and review information the associations may have concerning coatings or other controls.

3. Comment

The Notice of Proposed Rulemaking (NPR) stated that Illinois has documentation that complying coatings are available (and in use) for the heavy duty, off-highway vehicle (HOV) manufacturing industry, and that an explanation should be provided of why Navistar cannot use such coatings. OEPA and RAPCA commented that they do not believe the study referred to in the notice of proposed rulemaking is relevant to Navistar's Springfield facilities. This is based on the dissimilarities between Navistar's trucks, which utilize customized coatings designed to meet the individual customer's preference, and the HOV's referred to in the study.

Navistar added that the two are not comparable because the HOV industry uses standard color coatings which do not have to meet the performance tests of the high-quality finishings applied at the Springfield plants. Finally, all three commenters stated that the industries are not comparable due to the differences in the numbers and volumes of coatings used.

USEPA's Response. The commenters have misinterpreted the statements in the NPR. USEPA is not suggesting that Navistar must use the coatings used by the HOV industry. However, because the two industries appear to be similar in some respects, USEPA does feel that some explanation of possible differences in the operations which would make it infeasible for Navistar to use the coatings used by some HOV manufacturers is in order.

OEPA, RAPCA and Navistar have all attempted to indicate such differences. The fact that coatings used by Navistar must meet more stringent performance tests would be more convincing if it has been shown that the coatings used by the HOV manufacturers would not be able to meet such requirements. Likewise, the differences in number and volume of coatings used may have some merit as a basis for not using the coatings used by the HOV manufacturers. However, no detailed information has been provided concerning the number and volumes of coatings used by Navistar and how this relates to the number and volumes of coatings used by the HOV manufacturers or how these factors affect Navistar's ability to use the complying coatings used by the HOV industry. Therefore, USEPA is not able to evaluate the merit of these arguments.

B. Economic Feasibility of Meeting the SIP Limit

1. Navistar's Comment

Navistar's comments contain a lengthy discussion of the appropriate cost-effectiveness cutoff for determining the economic feasibility of add–on control equipment.

USEPA's Response. This entire discussion is completely irrelevant to the rulemaking. The NPR clearly states that the issue of concern is the validity of the cost estimates provided by Navistar, not whether, based on these estimates, control equipment can be considered economically feasible.

2. Navistar's Comment

Navistar's comments reference a draft report prepared by a contractor for USEPA as part of USEPA's enforcement case. Navistar states that the cost estimates contained in this report yield cost-effectiveness values ranging from $7,935 to $604,428 per ton of VOC controlled. In addition, this report only considers two control alternatives.

USEPA's Response. The draft report referenced by Navistar was never intended to be a comprehensive evaluation of the economic feasibility of add-on control equipment. The purpose of the report was to evaluate the technical feasibility of control equipment, with cost estimates provided for informational purposes only. Furthermore, because this report was prepared for USEPA only as part of its enforcement action, it has no relevance to the rulemaking.

3. Navistar's Comment

Navistar's comments provide additional information concerning the economic feasibility of add-on control equipment. This new information consists of more detailed cost estimates and an explanation of how cost figures were determined. Navistar believes that this information shows that add-on control is economically infeasible.

USEPA's Response. Based on the more detailed cost estimates provided by Navistar, add-on control equipment appears to be economically infeasible for the spray booths. However, Navistar still has not demonstrated that it would not be feasible to control oven exhausts. Navistar has argued that such control is not feasible because of the low volume gas stream and low VOC content of the oven exhaust, and because the great majority of VOC emissions from the facilities are exhausted from the spray booths and flash-off areas. The only information provided to support this argument is a September 4, 1984, Kintech report. The report shows that for lines 57 and 58, only 4 to 5 percent of VOC emissions are exhausted from the bake ovens. The report does not discuss the distribution for the other five lines which have ovens. While control of the bake ovens may not reduce emissions enough to bring these lines into compliance, it still may be a reasonable way to reduce emissions beyond the level proposed in the variances. It is common, for example, in the auto industry to control bake ovens where less than 20 percent of emissions are exhausted.

C. Technical Feasibility of Meeting the SIP Limit

Navistar's Comment. Navistar's comments concerning technical feasibility of meeting the existing SIP limit are, in large part, the same as its comments on the expeditiousness of the compliance plan. Navistar believes that the information adequately demonstrates that the complying coatings are unavailable

USEPA's Response. As discussed previously, Navistar has not demonstrated that complying coatings are unavailable. In addition to the lack of information concerning the compliance status of other heavy duty trucks assembly plants and the feasibility of using coatings used by HOV manufacturers, Navistar still has not demonstrated that it has been unable to reformulate a sufficient number of its coatings to achieve compliance with the applicable rule on a daily basis. Navistar argues that reformulation (and compliance) is not feasible because Navistar uses 6500 different coatings. However, it seems likely that if Navistar uses that many coatings, some of the coatings are used in large quantities while others are only used occasionally, or that some of the coatings may be similar. If this is the case, Navistar should have focused its reformulation efforts on high volume coatings (or groups of coatings). In any case, Navistar has not provided any detailed information concerning the number and volumes of coatings used or its efforts to reformulate coatings. Although Navistar has provided a chronology of coating development and testing, it is not clear how many of the items listed in the chronology relate to development of complying coatings for the Springfield plants.

D. Other Comments

1. OEPA's RAPCA's and Navistar's Comments

OEPA, RAPCA and Navistar all state that USEPA incorrectly evaluated the variances for seven of the lines as permanent relaxations. They feel that, because the variances expired on December 31, 1987, the revisions should be considered a compliance date extension for all of the lines.

USEPA's Response. The variances for the seven lines were treated as permanent relaxations because they do not require lines to come into compliance with the SIP once the variances expire. Instead, the variances require Navistar to evaluate the feasibility of three different emission limitations (one of which is a permanent relaxation). OEPA's and RAPCA's comments indicate that Navistar has submitted an alternative emission control strategy which is under review by OEPA.

In addition, it should be noted that even if these variances could be considered compliance date extensions, they would still not be approvable. As discussed previously, it has not been demonstrated that compliance by December 31, 1987, is expeditious and that such an extension will not jeopardize attainment or maintenance.

Finally, because the variances expired before they went into effect (they are effective upon approval by USEPA), even if they were approved as SIP revisions, they would have no effect.

2. Navistar's and MVMA's Comments

Navistar and MVMA state that the NPR does not provide an adequate explanation of USEPA's basis for its determination and that USEPA does not identify any specific control technology or coating reformulation which is reasonably available considering technological and economic feasibility.

USEPA's Response. The NPR clearly explains the basis of USEPA's proposed disapproval. The compliance date extension is not approvable because the compliance schedule was not demonstrated to be expeditious. This must include a survey of other similar sources. The relaxation is not approvable because it has not been demonstrated that it is infeasible to meet the existing SIP limit. In addition, for both the extension and the relaxation the State must demonstrate that approval will not jeopardize attainment or maintenance. As discussed in the NPR, there is a lack of documentation to support the revision.

The limits and schedules contained in Ohio's Federally approved SIP are presumed to represent the implementation of RACT as expeditiously as practicable unless a demonstration is made that such limits are not achievable in the time allowed. It is not the responsibility of USEPA to demonstrate that such limits are achievable, but it is the responsibility of the State (and Navistar) to demonstrate that they are not.

3. Navistar's Comment

Navistar states that the Agency record is incomplete because it does not contain a number of relevant documents.

USEPA's Response. USEPA's docket files regarding Navistar's site-specific RACT SIP revision contains all of the documents directly pertinent to this SIP revision.

4. Navistar's Comment

Navistar provided additional information concerning ozone levels in the vicinity of the Navistar facility. Navistar's consultant indicated that the meteorological data and air quality data for high ozone days in the Dayton area during the 1979 through 1987 period imply that Navistar's emissions did not contribute to the monitored standard exceedances. In addition, it is indicated that the Dayton area was in attainment of the ozone standard during the 1985–1987 period even without an emission reduction from the Navistar facility.

USEPA's Response. The meteorological analysis included in the report was based on single line forward and backward trajectories for the high ozone days. The single line trajectory of the analysis ignores the three dimensional nature of ozone formation and transport. A more sophisticated analysis is necessary. Further, despite the report's claim that Navistar's emissions only impacted downwind attainment areas, little can be said about this impact because no or little data exist in these areas upon which to base conclusions. No modeling analyses were conducted to support any claim of a lack of ozone standard exceedances downwind of Navistar.

Although no violations of the ozone standard were monitored in the 1985–1987 period in the Dayton area, they were monitored in the 1986–1988 period. In the 1986–1988 period, the Urbana Road site in Clark County recorded seven exceedances of the standard, with five occurring in 1988. The Spangler Road site in Clark County experienced six exceedances of the standard in the 1986–1988 period. Clearly, Clark County and the rest of the Dayton area continue to experience violations of the standard. More ozone precursor emission reduction is required in this area.

5. Navistar's Comment

Navistar contends that USEPA's review of its site-specific RACT SIP revision "has been tainted by an improper mixture of its program and enforcement functions."

USEPA's Response. Navistar bases this argument on two facts, neither of which is supported in the administrative record. First, Navistar argues that the mere filing of an enforcement action against Navistar automatically undermines USEPA's ability to review objectively the site-specific RACT SIP revision. Yet, Navistar fails to note that the enforcement actions against its plants were instituted before it submitted its March 10, 1988, SIP revision. The USEPA's notice of violations at Navistar's assembly plant was issued on March 21, 1984, and the notice of violations at its body plant was issued on December 30, 1985. Moreover, the Federal complaint for assembly plant violations was filed on April 30, 1985. A second complaint for body plant violations was filed November 30, 1988. Almost all of USEPA's enforcement actions were taken prior to USEPA's knowledge of

the requested SIP revision. Navistar's argument that the filing of a SIP revision should suspend all Federal enforcement action would gravely undercut the enforcement requirements of the Clean Air Act, 42 U.S.C. 7413. A violator remains subject to the existing requirements of a SIP until a SIP revision is obtained. *Train* v. *Natural Resources Defense Council*, 421 U.S. 60, 92 (1975); *Duquesne Light Co.* v. *USEPA*, 698 F.2d 456, 471 (D.C. Cir. 1983); *National Resources Defense Council* v. *USEPA*, 507 F.2d 905, 915 (9th Cir. 1974).

The other fact Navistar refers to which purportedly supports its argument that there has been an improper mixture of rulemaking and enforcement is that USEPA allegedly has made a Federal court pleading part of the administrative record. Navistar cities "Record Item 261–5," which it alleges corresponds to the pleading styled, "Defendant's First Set of Requests for Admissions dated December 17, 1987." After a careful review of the index to the administrative record and the administrative record itself, USEPA can locate no such document.

In summary, the administrative record contains the very items Navistar suggests it should: "the identities of all persons involved in the Agency's review of the SIP revision and * * * memoranda, records of conversations, or other documents reflecting that review" (Navistar comment, page 23). USEPA's rulemaking on Navistar's site-specific RACT SIP revision has been completely independent of its enforcement action as mandated by the law. *See Bethlehem Steel* v. *USEPA*, 638 F.2d 994 (7th Cir. 1980).

Conclusion

USEPA is disapproving this revision because the State has not demonstrated that Navistar's compliance schedule is expeditious, that meeting the existing SIP limit is technically or economically infeasible, and that the revision will not jeopardize attainment or maintenance.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Carbon monoxide, Hydrocarbon, Intergovernmental offices.

Authority: 42 U.S.C. 7401–7642.

Dated: August 31, 1989.

Frank M. Covington,

Acting Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

Title 40 of the Code of the Federal Regulations, chapter 1, part 52, is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1885 is amended by adding paragraph (p) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(p) Disapproval—On March 10, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a site-specific revision to the Ohio ozone SIP for volatile organic compound emissions from Navistar's (Formerly called International Harvester) one surface coating line at its Body plant and nine lines at its Assembly plant. Both plants are located in Springfield, Clark County, Ohio. Clark County is designated nonattainment for the pollutant ozone under section 107 of the Clean Air Act (40 CFR 81.336).

[FR Doc. 89–21459 Filed 9–12–89; 8:45 am]

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40 CFR Part 799

[OPTS–42099A; FRL–3645–8]

Methyl Ethyl Ketoxime; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final test rule under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of methyl ethyl ketoxime (MEKO, CAS No. 96–29–7) to perform testing for health effects. The testing requirements include oncogenicity, mutagenicity, developmental toxicity, reproductive toxicity, neurotoxicity, and pharmacokinetics. For the pharmacokinetics test only, EPA will finalize the test standard and reporting requirement in a separate final rule.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on September 27, 1989. This rule should become effective on October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA is issuing a final test rule under section 4(a) of TSCA to require health effects testing for MEKO.

I. Introduction

A. Test Rule Development Under TSCA

This final rule is part of the overall implementation of section 4 of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require the development of data relevant to assessing the risk to health and environment posed by exposure to particular chemical substances or mixtures (chemicals).

Under section 4(a) of TSCA, EPA must require testing of a chemical to develop data if the Administrator makes certain findings as described in TSCA under section 4(a)(1) (A) or (B). Detailed discussions of the statutory section 4 findings are provided in the EPA's first and second proposed test rules which were published in the Federal Register of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

B. Regulatory History

The Interagency Testing Committee (ITC) designated MEKO for priority testing consideration in its 19th Report, published in the Federal Register of November 14, 1986 (51 FR 41417). The ITC recommended that MEKO be considered for health effects testing. EPA responded to the ITC's recommendations for MEKO by publishing a notice of proposed rulemaking in the Federal Register of September 15, 1988 (53 FR 35838), which proposed that MEKO be tested for oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, neurotoxicity, and pharmacokinetics. The proposed rule contained a chemical profile of MEKO, a discussion of EPA's TSCA section 4(a) findings, and the proposed test standards and reporting requirements.

II. Response to Public Comments

EPA received written comments on the MEKO proposed test rule from Allied-Signal, Inc. (Allied), Huls America Inc. (Huls), Cosan Chemical Corp. (Cosan), and ICI Americas Inc. (ICI). A public meeting was also requested by Allied and was held on December 15, 1988 (Ref. 18). Allied submitted additional comments on human exposure to MEKO (Ref. 21) and on the economic impact of the rule (Ref. 23). The comments submitted by these companies and the EPA's response are contained in the public record for this rule (Ref. 24)

A. Route of Administration

Huls believes that all major toxicity tests should be conducted by the inhalation route and that inhalation is the major route of human exposure to MEKO. Allied believes the oncogenicity test should be conducted by inhalation.

EPA believes that, in addition to inhalation exposure, dermal contact may also be an important route of exposure to MEKO (Refs. 3 and 11). EPA has no information at this time to reject the inhalation route for the oncogenicity, in vivo mammalian cytogenetics, and neurotoxicity studies, and the final rule has been modified to allow either inhalation or oral routes for these tests. EPA believes there will be severe methodological problems associated with performing the developmental and reproductive toxicity tests by the inhalation route. The most serious problem is that dosing the dams by inhalation requires prolonged separation from their offspring (Ref. 40). Because the reproductive land developmental studies are complimentary, EPA has concluded that they should be conducted by the same route.

B. Oncogenicity

Huls believes acetoxime is not a good analogue because MEKO is asymmetrical and because acetoxime may be an atypical homologue.

EPA believes that, although acetoxime is symmetrical and the first member of a homologous series, it is still a good analogue for MEKO and is adequate for the finding that MEKO may present an unreasonable risk of injury to human health. Structurally, MEKO differs from acetoxime by a single methyl group, both chemicals are relatively water soluble and both exhibit similar acute toxicity (Ref. 24).

Allied believes the study by Mirvish concerning acetoxime and the positive results from a mouse lymphoma mutagenicity study are not an adequate basis for requiring a bioassay.

EPA has concluded that the Mirvish study of acetoxime, while not sufficient for use in quantitative risk assessment, is sufficient to raise concern for the possible oncogenicity of MEKO. EPA's use of structure-activity relationships (SAR) in supporting the section 4(a)(1)(A) TSCA finding was upheld by the D.C. Circuit Court of Appeals in a case reviewing the final rule for 2-Ethylhexanoic Acid (EHA, Ref. 39). The court stated, "But Congress explicitly contemplated that EPA would base test rules on comparisons among structurally similar chemicals" (Ref. 41). In addition, the Third Circuit has suggested that "structure-activity relationships" be used even when there is uncertainty and that such uncertainty may "highlight the need for testing" (Ref. 42).

EPA believes the positive results from the mouse lymphoma study of MEKO provide further evidence that MEKO may be oncogenic.

Allied indicates that neither of the hypothesized metabolites of MEKO, methyl ethyl ketone (MEK), or hydroxylamine, have been implicated in a positive carcinogenic response.

EPA believes MEKO itself may be oncogenic. This alone is sufficient for EPA's findings under TSCA section 4(a)(1)(A). Furthermore, even if the metabolites are not carcinogenic, there is no assurance that the parent compound (MEKO) is not.

Allied believes that, because tumors were observed in male rates in the study of acetoxime, the male rat would be an adequate subject for testing MEKO, and testing females is not necessary.

EPA disagrees. Testing experience and standard scientific references indicate there may be substantial sex-related differences in sensitivity to different compounds, EPA is requiring that females as well as males be tested.

Allied expressed general concern for the unnecessary sacrifice of animals.

EPA shares this concern, and has made every effort to design studies which economize on the number of animals while providing adequate numbers for acceptable statistical analysis. Industry may further reduce the number of animals by submitting study plans which use satellite groups or the same animals for different measurements, wherever feasible. EPA also notes that there are presently no alternatives to whole-animal testing for the toxicological endpoints required by this rule.

Allied and Huls believe there is no justification for using two species in any oncogenicity study of MEKO. They believe testing should be limited to the rat because the mouse is a poor test species for a substance where they believe the liver is the sole target organ. Huls is concerned about using the B6C3F1 mouse.

EPA disagrees. It has not been established that the liver is the only target for possible MEKO oncogenicity. EPA requires data from two species under its cancer risk assessment guidelines. Thus, a negative single species test would be insufficient evidence to exonerate MEKO. This requirement is consistent with those of the EPA Office of Pesticide Programs and the Organization for Economic Cooperation and Development (OECD).

EPA has not specified the strain of mouse for testing MEKO, however, the National Toxicology Program (NTP) concluded that even with the variable rate of background liver tumors in males, the B6C3F1 mouse is an acceptable species for oncogenicity studies (Ref. 19). EPA would consider the variable rate of background tumors with other evidence in estimating potential human risk from MEKO.

Huls believes that the reporting requirements should be extended to 65 months if conducted in only the rat and 79 months if both rat and mouse are used.

EPA does not believe that MEKO presents special testing problems requiring an extension of the reporting requirements.

C. Mutagenicity

Allied believes that because the mouse lymphoma assay conducted on MEKO was negative with activation, MEKO would be deactivated by enzymes in vivo.

EPA believes the positive results from this mouse lymphoma study, without activation, indicate that MEKO can potentially cause mutagenic effects. The negative result obtained by using enzymes in vitro does not necessarily predict how MEKO would react in vivo, nor how it would be processed by human enzyme systems. This information must be obtained through further testing. In addition, EPA found that hydroxylamine, a possible metabolite of MEKO, and hydroxylamine hydrochloride, a structurally related chemical, are mutagenic in a variety of test systems (Refs. 6 and 7). Therefore, MEKO may also be mutagenic. Allied noted that hydroxylamine is active in vitro but not in vivo. Further, hydroxylamine, a product of normal cell metabolism, is endogenously present in humans where it apparently does not have mutagenic effect.

EPA believes in vitro studies indicate that hydroxylamine is intrinsically

mutagenic, and are sufficient to raise concern for MEKO. Further study is needed to determine the mutagenic risk of MEKO itself.

Allied requests that in vitro cytogenetics, sister chromatid exchange, and Ames *Salmonella* studies of MEKO being conducted by NTP be evaluated before conducting mutagenicity studies of MEKO.

EPA's tiered testing system for both gene mutations and chromosomal aberrations is explained in detail in the final test rules for C9 aromatic hydrocarbon fraction (40 CFR 799.2175; 50 FR 20662; May 17, 1985), and diethylenetriamine (40 CFR 799.1575; 50 FR 21398; May 23, 1985).

NTP has indicated that the in vitro cytogenetics and the in vitro sister chromatid exchange studies conducted by NTP are negative (Ref. 31). EPA has not reviewed the studies but will do so when they are available. However, regardless of the results of NTP's testing, both the sex-relinked recessive lethal assay in *Drosophila* and an in vivo mammalian bone marrow cytogenetics test are required to confirm the negative.

D. Developmental and Reproductive Toxicity

Allied proposed that a protocol combining developmental toxicity, neurotoxicity, and reproductive toxicity be devised.

EPA believes that a combined protocol testing for neurotoxicity, developmental toxicity, and reproductive toxicity will compromise the results of these studies. Developmental and reproductive tests require different exposure periods and different dose levels. Neurotoxicity tests also require longer exposure times than the developmental test (Ref. 24, 25, and 40). Theoretically, the neurotoxicity and reproductive studies could be combined. However, at this time, the commenter failed to establish that it can be done successfully.

Allied disagrees with EPA's interpretation of data used to support the need for reproductive toxicity testing of MEKO.

Although EPA believes data from the 13-week subchronic toxicity study (Ref. 30) are inadequate to prove that MEKO causes hypospermatogenesis, these data strongly suggest that MEKO may cause adverse effects on male reproductive organs (Ref. 25).

Allied questions EPA's use of Ramaija's study with hydroxylamine (Ref. 31) to support the need for reproductive toxicity testing, and especially the use of spermatogenesis staging studies.

Although the Ramaija data do not prove conclusively that hydroxylamine is a reproductive toxicant, EPA believes the data suggest that hydroxylamine has adverse effects on spermatogenesis and embryonic viability. These study results support concern for the potential reproductive toxicity of hydroxylamine, and hence of MEKO. We also believe that if reproductive toxicity testing is to be conducted, it would be prudent to include the "histopathology of the tests with staging of the sperm" as outlined in the proposed rule. We do not concur with Allied that staging of sperm is only appropriate for compounds that are metabolized slowly. The purpose of the staging study is to determine if a particular stage of sperm development is uniquely sensitive to the toxic effects of a compound. For this purpose quantitation is not necessary. Since spermatogenesis is a continual process, and not a cyclic process, all stages of sperm development will be present and exposed to a compound even if the compound is metabolized and eliminated rapidly. Although the data from the study by Ramaija are of limited value because of the high doses used, they do not provide suggestive evidence that specific stages of sperm development may be more sensitive to the effects of hydroxylamine than other stages.

Allied questions EPA's use of the available information on hydroxylamine as support for developmental toxicity testing of MEKO.

EPA considers none of the studies available on the developmental toxicity of hydroxylamine to be adequate for risk assessment. However, these data are considered sufficient to raise concern for the developmental toxicity potential of hydroxylamine. Since hydroxylamine is a possible metabolite of MEKO, EPA believes MEKO may also be developmentally toxic.

Allied considered the results of two developmental toxicity tests (Ref. 16) to be contradictory and thus insufficient to support developmental toxicity testing.

EPA disagrees (Ref. 25). Both studies demonstrated increased frequencies of skeletal anomalies and grossly malformed fetuses. Because MEKO is structurally related to the chemicals from these studies, MEKO may cause similar effects.

E. Neurotoxicity

Allied and Huls believe that existing data for MEKO indicate it is unlikely that MEKO will cause neurotoxic effects.

As a matter of testing policy, the substantial production, the substantial potential exposure to MEKO, and the lack of adequate neurotoxicity data justify definitive testing under TSCA. The available data are limited (Refs. 1, 16 and 24). There is no evidence that other than gross cage side observations were conducted in any of the existing studies, and EPA believes data from these studies is inadequate for evaluating the potential for neurotoxic effects from MEKO.

If neurotoxicity testing is to be conducted, Huls recommends that satellite groups be added to the subchronic probe study for the oncogenicity test to conserve animals.

As prescribed in 40 CFR 798.6400, the neurotoxicity tests may be combined with any other toxicity test as long as one of the requirements of either are violated by the combination.

Huls commented that, only if pathologic evidence from examination of a variety of neurologic tisses provides reason for concern, should the additional proposed neurotoxicity testing be required.

No data were provided by the commenters to support their contention that a persistent nervous system effect must have a basis in observable pathology. EPA does not agree that only those chemicals that test positive for neuropathological effects warrant testing for functional or behavioral type effects. The National Academy of Sciences also supports the consideration of both behavior and pathology in evaluation of neurotoxic effects (Refs. 43, 44, 45).

Allied believes that EPA has not considered the availability of contract laboratories to conduct the neurotoxicity studies.

EPA has determined that laboratories are available to complete the neurotoxicity testing requirements for the MEKO final rule (Ref. 38).

F. Pharmacokinetics

Allied believes that the pharmacokinetics test guideline has not undergone full scientific and technical evaluation and comment.

Because numerous comments were received on the generic pharmacokinetics guideline published in the MEKO proposed rule (53 FR 35838; September 15, 1988), EPA has decided to reevaluate the pharmacokinetics test standard and reporting requirements for MEKO. EPA plans to promulgate the pharmacokinetics test standard and related reporting requirements for MEKO in a separate rule.

G. Exposure

Allied contends that MEKO has insufficient exposure potential to pose

unreasonable risk of injury since workplace exposure is controlled during manufacture, and consumer and occupational exposure to MEKO from paint is low. In support of this claim, Allied submitted the results of an exposure study (Ref. 21).

EPA has reviewed this study (Ref. 20) and has found that the methodology used by Allied in developing exposure estimates was similar to the methodology used by EPA. Furthermore, the MEKO exposure levels and number of people exposed agree with or exceed those previously estimated by EPA. EPA has found that individual exposure estimates can vary a great deal with small changes in the assumptions used for the calculations. Exposure to MEKO is a range of values depending upon factors like ventilation, application method, duration, amount of paint used, and others. Moreover, as risk is a function of toxicity and exposure, levels of exposure have no meaning for determining risk until testing is conducted to determine the toxicity of a chemical. EPA believes the potential exposure to MEKO both with regard to the large numbers of individuals exposed and the duration and levels to which they are exposed are sufficient to support the TSCA section 4 (a)(1) (A) and (B) findings.

H. Economic Impact

Allied believes that the cost of testing will force Allied to abandon its production of MEKO. They state that price competition for Meko is keen, and foreign suppliers respond aggressively to opportunities to gain market share.

EPA believes that even though the annualized costs of testing may appear high relative to the product price, other factors indicate that the potential for economic impact is moderate. Because there are no cost-effective substitutes for MEKO, the price of MEKO can be increased to cover the cost of testing. In addition, because small quantities are used in paints, the increased cost of MEKO would have little effect on retail paint prices. EPA believes the market for alkyd resin paints is relatively stable, and alkyd resin paint manufacturers will continue to use MEKO in their formulations. In addition, EPA believes the market structure of MEKO may change, but the market will support testing for MEKO, and MEKO will continue to be available to domestic users.

EPA cost reimbursement procedures subject all manufacturers and importers, under the rule, to the same requirements for cost reimbursement. EPA has not received adequate information for evaluating the cost structure of foreign suppliers or of Allied. Foreign suppliers could use subsidies, as Allied has claimed, to increase market share. But, EPA believes subsidies could be used independent of a test rule for MEKO.

Allied believes the anti-skinning agent market will be eliminated in 5 years and that a 5-year amortization period will more than double EPA's estimated annual burden.

EPA notes there is some indication of a possible decline in the demand for alkyd resin paints, but does not believe that the anti-skinning market will be eliminated in 5 years. Nonetheless, EPA used Allied's estimate of a 5-year amortization period as a worst case scenario. The increase does not appropach the price of the substitutes for MEKO. No data have been provided to EPA to justify use of a 5-year amortization period.

Allied claims key economic determinants of competition profitability, and historical price competition were neglected in EPA's economic analysis.

EPA requested information on cost structure, profitability, and historical price competition (Ref. 26). Additional information provided to EPA was inadequate to change EPA's analysis of economic impact. However, EPA acknowledges that Allied may leave the MEKO market.

Allied believes the total cost of testing will be $2.3 million.

EPA estimates that testing will cost between $1.4 and $1.9 million. Allied has not substantiated its claim for higher costs; and, without further information, EPA cannot justify using higher cost estimates. Nonetheless, using Allied's cost figures does not significantly change the economic viability of MEKO and does not change the conclusion of the economic analysis.

III. Final Test Rule for MEKO

A. Findings

Although findings under either section 4(a)(1) (A) or (B) may independently support testing, EPA is basing its oncogenicity, mutagenicity, developmental toxicity, reproductive toxicity, neurotoxicity, and pharmacokinetics testing for MEKO on the authority of section 4(a)(1) (A) and (B) of TSCA.

Under section 4(a)(1)(B)(i) of TSCA, EPA finds that MEKO is produced in substantial quantities and there may be substantial human exposure to MEKO during its manufacture, processing, and use.

Although the total annual production of MEKO is confidential business information (CBI), public information indicates the total imports and domestic annual production are in excess of 5 million pounds per year (Ref. 2). Over two million consumers may be exposed to MEKO through use of oil-based paints. In addition, consumers may be exposed to MEKO through use of household cleaning products and adhesives, caulking, and repair products (Refs. 3, 4, and 9). An estimated 900,000 professional painters may be routinely exposed to MEKO through use of oil-based paints (Ref. 14), and an estimated 12,000 workers in 1,500 plants may be exposed through manufacture and processing of MEKO (Refs. 10 and 11). EPA finds that this production volume and potential exposure to large numbers of consumers and workers constitutes sufficient basis for making a finding under section 4(a)(1)(B)(i) of TSCA.

Under section 4(a)(1)(A)(i), EPA finds that the manufacture, processing, and use of MEKO may present an unreasonable risk of injury to human health due to its potential to cause oncogenic, mutagenic, reproductive, developmental, and subchronic effects. The finding for potential oncogenic risk is based upon data which indicate that acetoxime, a structural analogue of MEKO, caused benign and carcinogenic hepatocellular tumors in mice (Refs. 5 and 8). In addition, MEKO is positive in the mouse lymphoma gene mutation test (Ref. 28) which also raises concern that MEKO may be oncogenic.

The finding for potential mutagenic risk is based on data indicating that MEKO caused gene mutations in a mouse lymphoma test (Ref. 28). In addition, data on hydroxylamine, a possible metabolite of MEKO, indicates hydroxylamine is mutagenic in various systems (Refs. 6 and 7). Because there is concern for potential mutagenicity from hydroxylamine, there is concern for potential mutagenci risk from MEKO.

The finding for potential reproductive risk is based on adverse effects on the tests of rats from a 90-day exposure to MEKO (Ref. 6). In addition, hydroxylamine, a possible metabolite of MEKO, appears to adversely affect spermatogenesis, mammary gland development, prolactin levels, estrous cycle, and development of Graafian follicles (Refs. 5, 6, 30, 31, and 37). These results suggest potential reproductive risk from MEKO.

The finding for potential developmental risk is based on data from tests on MEK, a possible metabolite of MEKO, which indicate that MEK causes skeletal and soft tissue abnormalities in rats at 1,000 ppm and soft tissue abnormalities in rats at 3,000 ppm (Ref. 13). In addition, data on

hydroxylamine (Refs, 5, 6, 30, 32, 37, and 39), another possible metabolite of MEKO, suggest that hydroxylamine is developmentally toxic. These studies on the metabolites of MEKO suggest that MEKO may also potentially cause developmental effects.

The finding for potential blood effects risk is based on data from a 90-day oral toxicity study of MEKO (Ref. 30) which suggest that MEKO induces hemolytic anemia in the rat with compensatory erythropoiesis as described in unit II.E.3. of the proposed rule (53 FR 35838; September 15, 1988), and supports concern for the risk of blood effects from MEKO.

Although the available data on blood effects are adequate for risk assessment, it may be in the interest of those subject to this rule to further assess blood effects. The 90-day subchronic study (Ref. 30) does not provide a no-observed-adverse-effect level (NOAEL) for blood effects for MEKO. Uncertainty factors would be added to the lowest-observed-adverse-effect level (LOAEL) to establish acceptable levels of exposure. Testing to determine the NOAEL for blood effects associated with subchronic and chronic exposure would reduce the uncertainty in evaluating these effects.

The NOAEL for blood effects could be established in the subchronic range-finding studies for the MEKO oncogenicity test. These data should be developed according to the test guidelines at 40 CFR 798.2650, modified to direct specific attention towards the hematology profile. Hematology determinations (hematocrit, hemoglobin concentrations, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count, and certain clinical biochemistry determinations on blood) could be made on all groups, including controls, at day 30 and at day 90 of the test period for the rat. A chronic NOAEL for blood effects could be obtained by modifying the oncogenicity study to include hematology and blood biochemistry. This could be accomplished by modifying the oncogenicity test guideline at 40 CFR 798.3300 to include hematology determinations and certain clinical biochemistry determinations on blood for rats, in accordance with 40 CFR 798.3320, the combined chronic toxicity/oncogenicity test guideline. Satellite groups of rats may be necessary to avoid stress to the test animals from blood sampling and to provide sufficient animals for adequate blood collections.

The findings for the potential health effects as listed above along with the exposure cited above (Refs. 2, 3, 4, 9, 10, 11, and 14) are sufficient to support EPA's finding that the manufacturing, processing, and use of MEKO may present an unreasonable risk of injury to human health.

Under section 4(a)(1) (A)(ii) and (B)(ii), EPA finds that there are insufficient data and experience from which the potential oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, and neurotoxicity from manufacturing, processing, and use of MEKO can reasonably be determined or predicted.

Under section 4(a)(1) (A)(iii) and (B)(iii), EPA finds that testing of MEKO is necessary to develop such data for oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, and neurotoxicity. EPA believes the data resulting from this testing will be relevant to a determination as to whether manufacturing, processing, and use of MEKO does or does not present an unreasonable risk of injury to human health.

Because of the conterns for oncogenicity, mutagenicity, blood effects, reproductive toxicity, and developmental toxicity for the described exposures to MEKO, EPA finds that pharmacokinetics testing is necessary. Pharmacokinetics data will be used for making extrapolations of toxicologic data from species to species, from route to route of administration, and from high to low doses. Pharmacokinetics data will be used to detect differences between sexes relative to the metabolic processes of absorption, tissue distribution, biotransformation and excretion. In addition, these data will show if metabolic processes are modified by different routes of administration or by repeated dosing.

B. Required Testing and Test Standards

On the basis of the findings presented in Unit III.A. of this preamable, EPA is requiring that health effects testing be conducted for MEKO. The tests shall be conducted in accordance with EPA's TSCA Good Laboratory Practice Standards in 40 CFR part 792 and in accordance with specific test standards based on the guidelines set forth in 40 CFR part 798, or other published test methods as specified in this test rule and enumerated in the following Table.

REQUIRED TESTING, TEST STANDARDS AND REPORTING REQUIREMENTS FOR MEKO

Test	Test standard (40 CFR citation)	Reporting deadline for final report [1]	Number of interim (6 month) reports required
Health Effects:			
Oncogenicity, oral/inhalation	§ 798.3300	53	8
Developmental toxicity, oral	§ 798.4900	15	2
Reproductive toxicity, oral	§ 798.4700	29	4
Sex-linked recessive lethal assay in *Drosophila*	§ 798.5275	18	2
In vivo mammalian bone marrow cytogenetics tests:			
Chromosomal analysis, oral/inhalation	§ 798.5385	14/17	2
or			
Micronucleus assay, oral/inhalation	§ 798.5395	18/17	2
Functional observational battery: Acute and subchronic, oral/inhalation	§ 798.6050	18/21	2
Motor activity test: Acute and subchronic, oral/inhalation	§ 798.6200	18/21	2
Neuropathology: Subchronic oral/inhalation	§ 798.6400	18/21	2
Pharmacokinetics [2]	([3])	([3])	

[1] Number of months, beginning with the effective date of this rule. These reporting requirements have been adjusted from those specified in the proposed rule to be consistent with other test rules under section 4 and to allow additional time if inhalation testing is conducted.

[2] Pharmacokinetics test standard and reporting requirements will be promulgated at a later date.

[3] [Reserved].

The health effects tests to be conducted for MEKO are: (1) An oral or inhalation 2-year oncogenicity study, using the guideline at 40 CFR 798.3300; (2) an oral 2-species developmental toxicity study using the guideline at 40 CFR 798.4900; (3) an oral 2-generation reproductive toxicity study using the guideline at 40 CFR 798.4700 and including histopathology of the ovaries, and vaginal cytology for the last 3 weeks prior to mating to monitor the estrus cycle; (4) sex-linked recessive lethal gene mutation assay in *Drosophila* using the guideline at 40 CFR 798.5275, (5) oral or inhalation in vivo mammalian bone marrow cytogenetics test using the guideline for either the chromosomal analysis at 40 CFR 798.5385 or the micronucleus assay at 40 CFR 798.5395; and (6) acute and subchronic (90-day) oral or inhalation neurotoxicity tests, including: a functional observational battery using the guideline at 40 CFR 798.6050, and a motor activity test using the guideline at 40 CFR 798.6200, and subchronic neuropathology using the guideline at 40 CFR 798.6400.

The test guideline for the two-generation reproductive toxicity test (40 CFR 798.4700) in the test standard for MEKO is modified as follows: The integrity of the various cell stages of spermatogenesis shall be determined, with particular attention directed toward achieving optimal quality in the fixation and embedding. Preparations of testicular and associated reproductive organ samples for histology should follow the recommendations of Lamb and Chapin (Ref. 46), or an equivalent procedure. Histopathology of the testes shall be conducted on all P and F_1 adult males at the time of sacrifice, and histological analyses shall include evaluations of the spermatogenic cycle, i.e., the presence and integrity of the 14 cell stages. These evaluations should follow the guidance provided by Clermont and Percy (Ref. 47). Information shall also be provided regarding the nature and level of lesions observed in control animals for comparative purposes.

Data on female cyclicity shall be obtained by performing vaginal smears and cytology in parental (P) and first generation (F_1) females over the last 3 weeks prior to mating. The cell staging technique of Sadleir (Ref. 33), and the vaginal smear method in Hafez (Ref. 34), or equivalent methods should be used. Data shall be provided on whether the animal is cycling and the cycle length.

P and F_1 females shall continue to be exposed to MEKO for at least an additional 2 weeks following weaning of offspring to permit them to begin cycling once again. They shall then be sacrificed and their ovaries shall be serially sectioned with a sufficient number of sections examined to adequately detail oocyte and follicular morphology. The methods of Mattison and Thorgiersson (Ref. 35) and Pederson and Peters (Ref. 36) may provide guidance. The strategy for sectioning and evaluation is left to the discretion of the investigator, but shall be described in detail in the protocol and final report. The nature and background level of lesions in the control tissue shall also be noted. Gross and histopathologic evaluations shall be conducted on the mammary glands in F_1 females and second generation (F_2) pups sacrificed at weaning and in adult (F_1) females at the termination of the study. Any abnormalities shall be described in the final report.

An in vitro mammalian cytogenetics assay, and a sister chromatid exchange test on MEKO were conducted by NTP, which indicates that both of these tests were negative (Ref. 31). NTP is also conducting a gene mutation assay in *Salmonella*. EPA will evaluate this information along with lower-tier mutagenicity data developed through this test rule to determine if the mouse visible specific locus assay, the rodent dominant lethal assay, the rodent heritable translocation assay, or other mutagenic testing is necessary for MEKO. These upper-tier mutagenic tests are not being required at this time. EPA is requiring that the TSCA Health Effects Testing Guidelines referenced in the table, including all modifications made herein, be the test standards for the required tests for MEKO. The TSCA testing guidelines for health effects testing specify generally accepted minimum conditions for determining the health effects for substances such as MEKO to which humans are exposed.

C. Test Substance

EPA is requiring that MEKO of at least 99 percent purity be used as the test substance. MEKO of this purity is commercially available. EPA has specified a relatively pure substance for teting because EPA is interested in evaluating the effects attributable to MEKO itself.

D. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which EPA makes section 4(a) findings (manufacture, processing, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing a chemical. Manufacturers and persons who intend to manufacture the chemical are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processor and persons who intend to process the chemical are required to test if the findings are based on processing. Manufacturers and processors and persons who intend to manufacture or process the chemical are required to test if exposure giving rise to the potential risk occurs during distribution in commerce, use, or disposal of the chemical.

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, processing, and use of MEKO on human health, EPA is requiring persons who manufacture and/or process, or who intend to manufacture and/or process MEKO, including persons who manufacture or process or intend to manufacture or process MEKO as a byproduct, or who import or intend to import products which contain MEKO, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements contained in this final rule. Persons who manufacture, import, or process MEKO only as an impurity are not subject to these requirements. The end of the reimbursement period shall be at least 5 years after the last final report is submitted, but if it takes longer than 5 years to develop the data, the reimbursement period shall be extended an amount of time equal to that which was required to develop the data.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR part 790.

Processors subject to this rule, unless they are also manufacturers, are not required to submit letters of intent or

exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. EPA expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or other reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, EPA will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for MEKO. As noted in Unit IV.B., EPA is interested in evaluating the effects attributable to MEKO itself and has specified a relatively pure substance for testing.

Manufacturers and processors subject to this test rule shall comply with the test rule development and exemption procedures in 40 CFR part 790 for single-phase rulemaking.

E. Reporting Requirements

All data developed under this rule shall be reported in accordance with TSCA Good Laboratory Practice (GLP) Standards which appear in 40 CFR part 792.

In accordance with 40 CFR part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each test.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. EPA's reporting requirements for each of the test standards are specified in the table in Unit III.B. Note that longer reporting periods are provided for inhalation tests to calibrate and set up inhalation chambers. Progress reports for all tests are required at 6-month intervals starting 6 months from the effective date of the final test rule.

TSCA section 14(b) governs EPA disclosure of test data submitted pursuant to section 4 of TSCA. Upon receipt of test data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR part 707. In brief, as of the effective date of the final test rule, an exporter of MEKO must report to EPA the first annual export or intended export of MEKO to each country. EPA will notify the foreign country concerning the test rule for the chemical.

F. Enforcement Provisions

EPA considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA or any rule issued under TSCA. Section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "* * * establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *" EPA considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with the final rule for MEKO. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data, interpretations, and evaluations, and to determine compliance with TSCA GLP Standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under test rules are reliable and adequate, and to include such other requirements as are necessary to provide such asssurance. EPA maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 of TSCA could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision applies primarily to manufacturers who fail to submit a letter of intent or an exemption request and continue manufacturing after the deadlines for such submissions. This provision also applies to processors who fail to submit a letter of intent or an exemption application and continue processing after EPA has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation, imprisonment for up to 1 year, or both. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator, as well as all the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (Ref. 2) that evaluates the potential for significant economic impact on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these tests costs by examining four market characteristics of MEKO: Price sensitivity of demand, industry cost characteristics, industry structure, and market expectations. Since, in the case of MEKO, preliminary analysis indicated some potential for significant economic impact, a more comprehensive and detailed analysis was conducted to

more precisely predict the magnitude and distribution of the expected impact.

Total testing costs for MEKO are estimated to range from $1.4 to $1.9 million. To predict the financial decision making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year. EPA recognizes that inhalation exposure during toxicity testing is more expensive than oral dosing. However, since exercising this option is voluntary, its cost has not been included in the economic analysis.

The annualized test costs, calculated using a cost of capital of 7 percent over a period of 15 years, range from $150,000 to $205,000. Though the annualized unit costs of the tests relative to the product price of MEKO appear to be high, EPA believes that the potential for adverse economic impact is moderate. This conclusion is based on the following observations: Demand for MEKO appears to be inelastic with respect to price in its largest end use as an antiskinning agent in alkyd paints because of the higher price of substitutes, and the market for MEKO appears to be stable.

Refer to the economic analysis which is contained in the public record for this rulemaking for a complete discussion of test cost estimation and potential for economic impact resulting from these costs (Ref. 2). Some of the information reviewed in the economic analysis is confidential business information and not available for public review. However, consideration of this information does not change the conclusions of the economic analysis.

V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule. Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing (PB 82-140773), can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 or the docket for this rule. On the basis of this study, EPA believes that there will be available test facilities and personnel to perform the testing specified in this rule.

EPA has recently reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 38) and believes that facilities will be available for conducting these tests. The laboratory review indicates that few laboratories are currently conducting these tests according to TSCA test guidelines and TSCA GLP Standards. However, the barriers faced by testing laboratories to gear up for these tests are not formidable. Laboratories will need to invest in testing equipment and personnel training, but EPA believes that these investments will be recovered as the neurotoxicity testing program under TSCA section 4 continues. EPA's expectations of laboratory availability were borne out under the testing requirements of the C_9 aromatic hydrocarbon fraction test rule at 40 CFR 799.2175. Pursuant to that rule, the manufacturers were able to contract with a laboratory to conduct the testing according to TSCA test guidelines and TSCA GLP Standards.

VI. Rulemaking Record

EPA has established a record for this rulemaking proceeding (docket number OPTS-42099A). This includes:

A. Supporting Documentation

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice containing the ITC's recommendation of MEKO to the Priority List (50 FR 41417; Nov. 14, 1986) and comments on MEKO in response to that notice.

(b) Methyl Ethyl Ketoxime; Proposed Test Rule and Proposed Pharmacokinetics Test Guideline (53 FR 35838; September 15, 1988).

(c) Rule requiring TSCA section 8(a) and 8(d) reporting on MEKO (51 FR 41328; Nov. 14, 1986).

(d) TSCA test guidelines cited as test standards for this rule, 40 CFR part 798.

(e) Final rule on Ethyltoluenes, Trimethylbenzenes, and the C_9 Aromatic Hydrocarbon Fraction (50 FR 20662; May 17, 1985).

(f) Final rule on Diethylenetriamine (50 FR 21398, May 23, 1985).

(2) Communications before final rulemaking, consisting of:

(a) Written public comments and letters.

(b) Meeting summaries.

(c) Telephone contact reports.

(3) Reports—published and unpublished factual materials including: Chemical Testing Industry: Profile of Toxicological Testing (October, 1981).

B. References

(1) U.S. Environmental Protection Agency (USEPA). Technical Support in Response to Public Comments: Methyl Ethyl Ketoxime. Syracuse Research Corporation. Contract number 68D80117. Office of Toxic Substances, Washington, DC. (December 12, 1986).

(2) USEPA Economic Impact Analysis of Proposed Test Rule for Methyl Ethyl Ketoxime. Mathtech, Inc. Contract number 68-02-4209. Office of Toxic Substances, Washington, DC. (1989).

(3) USEPA. Consumer Exposure to Methyl Ethyl Ketoxime from Use of Alkyl Paint. Intragency memorandum from P. Kennedy, Exposure Evaluation Division, to B. Carton, Test Rules Development Branch, Office of Toxic Substances, Washington, DC. (September 30, 1987).

(4) USEPA. National Household Survey of Interior Painters. Westat, Inc. Office of Toxic Substances. Exposure Evaluation Division. Washington, DC. (July 1987).

(5) USEPA. Validation of Toxicity Studies on MEKO and Policy Paper on Acetoxime. Intra-agency memorandum from P. Fenner-Crisp, Health and Environmental Review Division, to G. Timm, Test Rules Development Branch, Office of Toxic Substances. (September 24, 1987).

(6) USEPA. Chemical Hazard Information Profile, Hydroxylamine. Prepared by Science Applications, Inc., Oak Ridge TN, for the Office of Toxic Substances. Washington, DC. (September 11, 1984).

(7) USEPA. Review of Genotoxicity Sections of CHIP on Hydroxylamine. Intra-agency memorandum from Michael C. Cimino, Health and Environmental Review Division, to William Thompson, Health and Environmental Review Division. Office of Toxic Substances, Washington, DC. (April 7, 1986).

(8) USEPA. Basis for Conclusion that Acetoxime and Methyl Ethyl Ketoxime are Possible Human Carcinogens. Intra-agency memorandum from Don Clay, Director, Office of Toxic Substances, to John A. Moore, Assistant Administrator for Pesticides and Toxic Substances, Washington, DC. (January 29, 1985).

(9) U.S. Consumer Product Safety Commission. CHIP Data Request, Interagency memorandum from E.W. Leland, to M. Wind, through W.R. Hobby, Washington, DC (October 11, 1985).

(10) National Occupational Hazard Survey Trade Name Ingredient Database. Copy of computer printout for 2-butanone, oxime, Washington, DC (May 10, 1985 and July 23, 1985).

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(43) National Academy of Sciences/ National Research Council. "Principles for Evaluating Chemicals in the Environment." National Academy of Sciences, pp. 198-216. Washington, DC (1975).

(44) National Academy of Sciences/ National Research Council. "Principles and Procedures for Evaluating the Toxicity of Household Substances." National Academy of Sciences, pp. 111-118. Washington, DC (1977).

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Confidential business information (CBI), while part of the record is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. G-004, NE Mall, 401 M Street SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in costs or prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprise to compete with foreign enterprises.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the

organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*, Pub. L. 96–511, December 11, 1980), and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to total 12,534 hours and to average 1,253 hours per test, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments or information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 28, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, and 2625.

2. By adding new § 799.2700, to read as follows:

§ 799.2700 Methyl ethyl ketoxime.

(a) *Identification of test substance.* (1) Methyl ethyl ketoxime (MEKO, CAS No. 96–29–7) shall be tested in accordance with this section.

(2) MEKO of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import) or process or intend to manufacture or process MEKO, including persons who manufacture or process or intend to manufacture or process MEKO as a byproduct, or who import or intend to import products which contain MEKO, after the date specified in paragraph (e) of this section to the end of the reimbursement period, shall submit letters of intent to conduct testing, submit study plans, conduct tests and submit data, or submit exemption applications, as specified in this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking. Persons who manufacture, import, or process MEKO only as an impurity are not subject to these requirements.

(c) *Health effects testing*—(1) *Pharmacokinetics testing*—(i) *Required testing.* Pharmacokinetics testing shall be conducted with MEKO in accordance with paragraph (c)(1)(ii) of this section.

(ii) [Reserved.]

(2) *Oncogenicity*—(i) *Required testing.* Oncogenicity testing shall be conducted in accordance with § 798.3300 of this chapter.

(ii) *Route of administration.* MEKO shall be administered either orally or by inhalation.

(iii) *Reporting requirements.* (A) Oncogenicity testing shall be completed and a final report submitted to EPA within 53 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after the date specified in paragraph (e) of this section, until submission of the final report to EPA.

(3) *Developmental toxicity*—(i) *Required testing.* Developmental toxicity testing shall be conducted in a rodent and a nonrodent mammalian species in accordance with § 798.4900 of this chapter.

(ii) *Route of administration.* MEKO shall be administered orally.

(iii) *Reporting requirements.* (A) Developmental toxicity testing shall be completed and a final report submitted to EPA within 15 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after the date specified in paragraph (e) of this section.

(4) *Reproductive toxicity*—(i) *Required testing.* (A) Reproductive toxicity testing shall be conducted orally in accordance with § 798.4700 of this chapter except for the provisions in paragraphs (c) (8)(iii) and (9)(i) of § 798.4700.

(B) For the purpose of this section, the following provisions also apply:

(*1*) The following organs and tissues, or representative samples thereof, shall be preserved in a suitable medium for possible future histopathological examination: Vagina, uterus, oviducts, ovaries, testes, epididymides, vas deferens, seminal vesicles, prostate, pituitary gland, and, target organ(s) of all P and F_1 animals selected for mating.

(*2*)(*i*) Full histopathology shall be conducted on the organs and tissues listed in paragraph (c)(4)(i)(B)(*1*) of this section for all high dose and control P and F_1 animals selected for mating.

(*ii*) The integrity of the various cell stages of spermatogenesis shall be determined, with particular attention directed toward achieving optimal quality in the fixation and embedding. Preparations of testicular and associated reproductive organ samples for histology should follow the recommendations of Lamb and Chapin (1985) under paragraph (d)(1) of this section, or an equivalent procedure. Histopathology of the testes shall be conducted on all P and F_1 adult males at the time of sacrifice, and histological analyses shall include evaluations of the spermatogenic cycle, i.e., the presence and integrity of the 14 cell stages. These evaluations should follow the guidance provided by Clermont and Percy (1957) under paragraph (d)(2) of this section. Information shall also be provided regarding the nature and level of lesions observed in control animals for comparative purposes.

(*iii*) Data on female cyclicity shall be obtained by conducting vaginal cytology in P and F_1 females over the last 3 weeks prior to mating; the cell staging technique of Sadleir (1978) and the vaginal smear method in Hafez (1978) under paragraphs (d)(3) and (d)(7) of this section, respectively, or equivalent methods should be used. Data shall be provided on whether the animal is cycling and the cycle length.

(*iv*) P and F_1 females shall continue to be exposed to MEKO for at least an additional 2 weeks following weaning of offspring to permit them to begin cycling once again. They shall then be sacrificed and their ovaries shall be serially sectioned with a sufficient number of sections examined to adequately detail oocyte and follicular morphology. The methods of Mattison and Thorgiersson (1979) and Pederson and Peters (1968) under paragraphs (d) (4) and (5) of this section, respectively, may provide guidance. The strategy for sectioning and evaluation is left to the discretion of the investigators, but shall be described in detail in the study plan and final report. The nature and background level of lesions in control tissue shall also be noted.

(*v*) Gross and histopathologic evaluations shall be conducted on the mammary glands in F_1 females and F_2

pups sacrificed at weaning and in adult F_1 females at the termination of the study. Any abnormalities shall be described in the final report.

(ii) *Reporting requirements.* (A) Reproductive toxicity testing shall be completed and a final report submitted to EPA within 29 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals, beginning six months after the date specified in paragraph (e) of this section until submission of the final report to EPA.

(5) *Mutagenic effects—gene mutations*—(i) *Required testing.* The sex-linked recessive lethal assay in *Drosophila* shall be conducted with MEKO in accordance with § 798.5275 of this chapter.

(ii) *Reporting requirements.* (A) The sex-linked recessive lethal assay in *Drosophila* shall be completed and a final report submitted to EPA within 18 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the date specified in paragraph (e) of this section.

(6) *Mutagenic effects—chromosomal aberrations*—(i) *Required testing.* (A) An in vivo mammalian bone marrow cytogenetics test shall be conducted with MEKO in accordance with either § 798.5385 (chromosomal analysis) of this chapter, or § 798.5395 (micronucleus assay) of this chapter except for the provisions in paragraphs (d)(5) (ii), (iii), and (iv) of §§ 798.5385 and 798.5395.

(B) For the purpose of this section, the following provisions also apply if § 798.5385 of this chapter is used in conducting the test:

(*1*) *Dose levels and duration of exposure.* At least three dose levels shall be tested. The highest dose tested shall be the maximum tolerated dose or that dose producing some signs of cytotoxicity (e.g., partial inhibition of mitosis) or shall be the highest dose attainable. Under oral administration, animals shall be exposed once per day for 5 consecutive days. Under administration by inhalation, animals shall be exposed 6 hours per day for 5 consecutive days.

(*2*) *Route of administration.* Animals shall be exposed to MEKO either orally or by inhalation.

(C) For the purpose of this section, the following provisions also apply if § 798.5395 of this chapter is used in conducting the test:

(*1*) *Dose levels and duration of exposure.* At least three-dose levels shall be tested. The highest dose tested shall be the maximum tolerated dose or that dose producing some signs of cytotoxicity (e.g., a change in the ratio of polychromatic to normochromatic erythrocytes) or shall be the highest dose attainable. Under oral administration animals shall be exposed once per day for 5 consecutive days. Under administration by inhalation, animals shall be exposed 6 hours per day for 5 consecutive days.

(*2*) *Route of administration.* Animals shall be exposed to MEKO either orally or by inhalation.

(ii) *Reporting requirements.* (A) The oral in vivo mammalian cytogenetics test shall be completed and a final report submitted to EPA within 14 months of the date specified in paragraph (e) of this section. The inhalation in vivo mammalian cytogenetics test shall be completed and a final report submitted to EPA within 17 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after the date specified in paragraph (e) of this section.

(7) *Neurotoxicity*—(i) *Required testing*—(A) *Functional observational battery.* (*1*) A functional observational battery shall be conducted with MEKO in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d) (4)(ii), (5), and (6) of § 798.6050.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of exposure.* Animals shall be exposed either orally or by inhalation.

(*ii*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects in at least two of all the doses tested, including the highest dose, or no neurotoxic (behavioral) effects at any dose tested.

(*iii*) *Duration and frequency of exposure.* For the oral acute testing, animals shall be exposed once. For the oral subchronic testing, animals shall be exposed once per day 5 days per week for a 90-day period. For the inhalation acute testing, animals shall be exposed for 6 hours for 1 day. For the inhalation subchronic testing, animals shall be exposed 6 hours per day 5 days per week for a 90-day period.

(B) *Motor activity.* (*1*) A motor activity test shall be conducted with MEKO in accordance with § 798.6200 of this chapter except for provisions in paragraphs (d) (4)(ii), (5), and (6) of § 798.6200.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of exposure.* Animals shall be exposed either orally or by inhalation.

(*ii*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects in at least two of all the doses tested including the highest dose, or no neurotoxic (behavioral) effects at any dose tested.

(*iii*) *Duration and frequency of exposure.* For the acute oral testing, animals shall be exposed once. For the oral subchronic testing, animals shall be exposed once per day 5 days per week for a 90-day period. For the acute inhalation testing, animals shall be exposed for 6 hours for 1 day. For the inhalation subchronic testing, the animals shall be exposed for 6 hours per day 5 days per week for a 90-day period.

(C) *Neuropathology.* (*1*) A neuropathology test shall be conducted with MEKO in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d) (4)(ii), (5), (6), and (8)(iv)(C) of § 798.6400.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of exposure.* Animals shall be exposed either orally or by inhalation.

(*ii*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects in at least two of all the doses tested including the highest dose, or no neurotoxic (behavioral) effects at any dose tested.

(*iii*) *Duration and frequency of exposure.* Animals shall be exposed orally once per day 5 days per week for a 90-day period; or if exposed by inhalation, for 6 hours per day 5 days per week for a 90-day period.

(*iv*) *Clearing and embedding.* After dehydration, tissue specimens shall be cleared with xylene and embedded in paraffin or paraplast except for the sural nerve which should be embedded in plastic. Multiple tissue specimens (e.g., brain, cord, ganglia) may be embedded together in one single block for sectioning. All tissue blocks shall be labeled to provide unequivocal identification. A suggested method for plastic embedding is described by Spencer et al. in paragraph (d)(6) of this section.

(ii) *Reporting requirements.* (A) The neurotoxicity tests required under this paragraph (c)(7) and administered orally shall be completed and the final results submitted to EPA within 18 months of the date specified in paragraph (e) of this section. The neurotoxicity tests required under this paragraph (c)(7) and administered by inhalation shall be

completed and the final results submitted to EPA within 21 months of the date specified in paragraph (e) of this section.

(B) Interim progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the date specified in paragraph (e) of this section until submission of the final report to EPA.

(d) *References.* For additional background information, the following references should be consulted.

(1) Lamb, J. and Chapin, R.E. "Experimental models of male reproductive toxicology." In: "Endocrine Toxicity." Thomas, J.A., Korach, K.S., and McLachlan, J.A., eds. New York, NY: Raven Press. pp. 85–115. (1985).

(2) Clermont, Y. and Percey, B. "Quantitative study of the cell population of the seminiferous tubules in immature rats." "American Journal of Anatomy." 100:241–267. (1957).

(3) Sadleir, R.M.F.S. "Cycles and seasons." In: "Reproduction in Mammals: I. Germ Cells and Fertilization." Austin, R. and Short R.V., eds. New York, NY: Cambridge Press. Chapter 4. (1978).

(4) Mattison, D.R. and Thorgiersson, S.S. "Ovarian aryl hydrocarbon hydroxylase activity and primordial oocyte toxicity of polycyclic aromatic hydrocarbons in mice." "Cancer Research." 39:3471–3475. (1979).

(5) Pederson, T. and Peters, H. "Proposal for classification of oocytes and follicles in the mouse ovary." "Journal of Reproduction and Fertility." 17:555–557. (1968).

(6) Spencer, P.S., Bischoff, M., and Schaumburg, H.H. "Neuropathological methods for the detection of neurotoxic disease." In: "Experimental and Clinical Neurotoxicology." Spencer, P.S. and Schaumburg, H.H., eds. Baltimore, MD: Williams and Wilkins, pp. 743–757 (1980).

(7) Hafez, E.S., ed., "Reproduction and Breeding Techniques for Laboratory Animals." Chapter 10. Philadelphia: Lea and Febiger. (1970).

(e) *Effective dates.* (1) The effective date of this final rule is October 27, 1989.

(2) The guidelines and other test methods cited in this section are referenced here as they exist on October 27, 1989.

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 2070-0033).

[FR Doc. 89–21497 Filed 9–12–89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–4

[FTR Amendment 1]

Federal Travel Regulation

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation to increase the mileage reimbursement rate from 22.5 cents to 24 cents per mile for use of privately owned automobiles when authorized as advantageous to the Government. This FTR amendment reflects the results of the General Services Administration's (GSA's) report to Congress on the investigation of the cost of operating privately owned automobiles.

EFFECTIVE DATE: This final rule is effective for travel performed on or after September 17, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond F. Price, Jr., Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: The Travel Expense Amendments Act of 1975 (Pub. L. 94–22, May 19, 1975) authorizes the Administrator of General Services to issue regulations prescribing, within statutory limits, mileage allowance rates. GSA is required by law to periodically investigate the cost of operating privately owned vehicles (automobiles, airplanes, and motorcycles) to employees while on official travel and report the results of these investigations to the Congress. GSA reported the results of the December 1988 investigation of the cost of operating privately owned automobiles to the Congress indicating that the governing regulation would be revised to reflect an increase in the mileage allowance for use of privately owned automobiles. Necessary adjustments are reflected in this amendment to the FTR.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 301–4

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301–4 is amended as follows:

PART 301–4—REIMBURSEMENT FOR USE OF PRIVATELY OWNED CONVEYANCES

1. The authority citation for part 301–4 continues to read as follows:

AUTHORITY: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301–4.2 is amended by revising paragraphs (a)(2), (d)(1), and (d)(2) to read as follows:

§ 301–4.2 When use of a privately owned conveyance is advantageous to the Government.

(a) * * *

(2) For use of a privately owned automobile: 24 cents per mile.

* * * * *

(d) * * *

(1) *Round trip instead of taxicab to carrier terminals.* Instead of using a taxicab under § 301–2.3(c), payment on a mileage basis at the rate of 24 cents per mile and other allowable costs as set forth in § 301–4.1(c) shall be allowed for the round-trip mileage of a privately owned automobile used by an employee going from either the employee's home or place of business to a terminal or from a terminal to either the employee's home or place of business. However, the amount of reimbursement for the round trip shall not in either instance exceed the taxicab fare, including tip, allowable under § 301–2.3(c) for a one-way trip between the applicable points.

(2) *Round trip instead of taxicab between residence and office on day of travel.* Instead of using a taxicab under § 301–2.3(d) (in connection with official travel requiring at least one night's lodging), payment on a mileage basis at the rate of 24 cents per mile and other allowable costs as set forth in § 301–4.1(c) shall be allowed for round-trip mileage of a privately owned automobile used by an employee going from the employee's residence to the employee's place of business or returning from place of business to residence on a day travel is performed. However, the amount of reimbursement for the round trip shall not exceed the taxicab fare, including tip, allowable

under § 301–2.3(d) for a one-way trip between the points involved.

* * * * *

Dated: August 24, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–21478 Filed 9–12–89; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Parts 302–6 and 302–12

[FTR Amendment 2]

Federal Travel Regulation

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: Because of a change in the law, this final rule amends the Federal Travel Regulation to authorize, under certain conditions, reimbursement of allowable residence transaction expenses for employees transferred from an official station in a foreign area to a different nonforeign area official station than the one from which the employee was transferred when assigned to the foreign post of duty.

EFFECTIVE DATE: This final rule is effective for employees whose effective date of transfer (date the employee reports for duty at the new nonforeign area official station) is on or after February 19, 1988.

FOR FURTHER INFORMATION CONTACT: Doris L. Jones, Regulations Branch (FBTR), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: The Continuing Resolution for fiscal year 1988, Public Law 100–202 (101 Stat. 1329–430, 431) December 22, 1987, authorized new relocation benefits for certain transferred employees. Section 628 of that law amended 5 U.S.C. 5724a to specifically authorize, under certain specified conditions, reimbursement of allowable residence transaction expenses for employees transferred from an official station in a foreign area to a different nonforeign area official station than the one the employee left when transferred to the foreign post of duty.

The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 302–6 and 302–12

Government employees, Transfers, Relocation allowances and entitlements.

For the reasons set out in the preamble, 41 CFR parts 302–6 and 302–12 are amended as follows:

PART 302–6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. The authority citation for part 302–6 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 302–6.1 is amended by revising the introductory text, paragraphs (a), (b), (c), (d), and (e)(1), and by adding paragraph (g) to read as follows:

§ 302–6.1 Conditions and requirements under which allowances are payable.

To the extent allowable under this part 302–6, the Government shall reimburse an employee for expenses required to be paid by him/her in connection with the sale of one residence at his/her old official station, for purchase (including construction) of one dwelling at his/her new official station, or for the settlement of an unexpired lease involving his/her residence or a lot on which a mobile home used as his/her residence was located at the old official station provided the conditions set forth in this section are met:

(a) *Transfers covered—agreement required.* A permanent change of station is authorized or approved and, except as provided in paragraph (g) of this section, the old and new official stations are located within the 50 States, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States under the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979)), and the employee has signed an agreement as required in § 302–1.5. (See exclusions in § 302–6.4.)

(b) *Location and type of residence.* The residence or dwelling is the residence as described in § 302–1.4(j), which may be a mobile home and/or the lot on which such mobile home is located or will be located. These criteria also apply to the former nonforeign area official station residence of employees who are eligible for residence transaction expenses under paragraph (g) of this section (see definition in paragraph (g)(1)(i) of this section).

(c) *Title requirements.* The title to the residence or dwelling at the old or new official station, or the interest in a cooperatively owned dwelling or in an unexpired lease, is in the name of the employee alone, or in the joint names of the employee and one or more members of his/her immediate family, or solely in the name of one or more members of his/her immediate family. For an employee to be eligible for reimbursement of the costs of selling a dwelling or terminating a lease at the old official station, the employee's interest in the property must have been acquired prior to the date the employee was first officially notified of his/her transfer to the new official station. In the case of employees covered by paragraph (g) of this section, the employee's interest must have been acquired prior to the date the employee was first officially notified of his/her transfer to the foreign area.

(d) *Occupancy requirements.* The dwelling for which reimbursement of selling expenses is claimed was, except as provided in paragraph (g) of this section, the employee's residence at the time he/she was first officially notified by competent authority of his/her transfer to the new official station.

(e) *Time limitation*—(1) *Initial period.* The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 2 years after the date that the employee reported for duty at the new official station. For employees eligible under paragraph (g) of this section, new official station means the official station to which the employee reports for duty when reassigned or transferred from a foreign area.

* * * * *

(g) *Transfer from a foreign area to a nonforeign area*—(1) *Definitions.* For purposes of this paragraph (g), the following definitions apply:

(i) *Former nonforeign area official station.* This term means the official station from which the employee was transferred when assigned to the post of duty in the foreign area.

(ii) *Nonforeign area.* Nonforeign area includes the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the former Canal Zone

area (i.e., areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979)).

(iii) *Foreign area.* Foreign area refers to any area not defined as a nonforeign area.

(2) *Applicability.* The provisions of this part 302–6 are applicable, as specified in this paragraph (g), to employees who have completed an agreed upon tour of duty in a foreign area and instead of being returned to the former nonforeign area official station, are reassigned or transferred in the interest of the Government to a different nonforeign area official station than the official station from which the employee was transferred when assigned to the foreign post of duty. The distance between the former and new official station must meet the mileage criteria specified in § 302–1.7 for short distance transfers.

(3) *Authorized reimbursement.* Generally, an employee is required to serve at least one tour of duty in a foreign area and retain a residence in a nonforeign area with the expectation of returning to the former official station in the nonforeign area. However, there are instances when an employee completes a tour of duty in a foreign area and is subsequently transferred to a different official station or post of duty in a nonforeign area than the one from which he/she transferred when assigned to the foreign post of duty. When this type of transfer is authorized or approved, reimbursement is allowable for real estate expenses required to be paid by the employee in connection with:

(i) The sale of the residence (or the settlement of an unexpired lease) at the official station from which the employee was transferred when he/she was assigned to a post of duty located in a foreign area; and

(ii) The purchase of a residence at the new official station when the employee is transferred in the interest of the Government from a post of duty located in a foreign area to a nonforeign area official station (other than the official station from which he/she was transferred when assigned to the foreign post of duty).

(4) *Reimbursement limitations.* Reimbursement under this paragraph (g) is prohibited for any sale (or settlement of an unexpired lease) or purchase transaction that occurs prior to the employee's first being officially notified (generally in the form of a change of official station travel authorization) that instead of returning to the former nonforeign area official station, he/she will be reassigned or transferred to a different nonforeign area official station than the one from which he/she was transferred when assigned to the foreign post of duty.

(5) *Service agreement required.* A signed service agreement shall be required as prescribed in § 302.1.5 for any employee who is eligible for reimbursement of residence transaction expenses authorized under this paragraph (g).

PART 302–12—USE OF RELOCATION SERVICE COMPANIES

3. The authority citation for Part 302–12 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747); E.O. 12486, February 27, 1984 (49 FR 7349); E.O. 12522, June 24, 1985 (50 FR 26337).

4. Section 302–12.4 is amended by revising paragraph (b)(3) to read as follows:

§ 302–12.4 General conditions and limitations for eligibility.

* * * * *

(b) * * *

(3) Employees assigned or transferred to or from a post of duty in a foreign area except employees eligible for reimbursement of residence transaction expenses as provided in § 302.6.1(g).

Dated: August 24, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–21479 Filed 9–12–89; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6747

[ID–943–09–4214–10; IDI–27036]

Partial Revocation of Secretarial Order Dated October 8, 1921; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order which withdrew 80 acres of National Forest System land from surface entry for use by the U.S. Forest Service for Stock Driveway No. 48 in the Sawtooth National Forest. The land is not needed for the purpose for which it was withdrawn. This action will open the land to surface entry and allow for a proposed exchange. The land will remain closed to mining and mineral leasing due to an overlapping withdrawal.

EFFECTIVE DATE: October 13, 1989.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial order dated October 8, 1921, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 7 N., R. 14 E.,
Sec. 24, W½SE¼.

The area described contains 80 acres in Blaine County.

2. At 9:00 a.m. on October 13, 1989, the land described shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The land will remain closed to mining and mineral leasing.

Dated: September 1, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89–21506 Filed 9–12–89; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR 217 and 227

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Reinstatement of regulations.

SUMMARY: NOAA published an interim final rule on August 10, 1989, as a temporary substitute for the rule that requires shrimp fishermen in the Gulf of Mexico (Gulf) and the Atlantic Ocean off the coast of the southeastern United States to use Turtle Excluder Devices (TEDs) to reduce incidental captures of endangered and threatened species of sea turtles during shrimp fishing operations. The interim final rule allowed shrimp fishermen in offshore waters to choose between continuing to use TEDs or to restrict trawling times to specific 105-minute periods. That rule expired on September 8, 1989, at 12:01

a.m. After reviewing the comments on the interim final rule and evaluating the 105-minute trawl restriction, NOAA has decided to reinstate the TEDs regulations originally promulgated on June 29, 1987 (and as amended on October 5, 1987 and September 1, 1988). NOAA has also decided to allow emergency sea turtle conservation regulations promulgated on February 23, 1989, to continue in effect.

DATE: These regulations are effective September 8, 1989.

ADDRESS: Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles Karnella, (301) 427–2322, or Charles A. Oravetz, (813) 893–3366.

SUPPLEMENTAL INFORMATION:

Background

NOAA issued regulations under the Endangered Species Act (ESA) on June 29, 1987 (hereafter referred to as the TED regulations, 52 FR 24244) to protect endangered and threatened sea turtles. Those regulations required shrimp fishermen in the south Atlantic Ocean and the Gulf to use TEDs in certain areas and at certain times. Due to a delay imposed by Congress, those regulations did not become effective in most areas until May 1, 1989. In the Canaveral area of Florida, however, regulations have been in effect since October 1, 1987. In the Atlantic offshore waters of south Georgia and north Florida, an emergency rule requiring the use of TEDs became effective March 9, 1989 (see 54 FR 7773 (2/23/89)). That rule continues in effect.

The Secretary of Commerce (Secretary) implemented a 60-day grace period, issuing only written warnings for most violations, when the congressional delay expired. On July 20, 1989, the Secretary announced that enforcement of the TED regulations would resume. Over the weekend of July 22–23, shrimp fishermen in several Gulf ports engaged in various forms of civil disobedience protesting the enforcement of the TED regulations. In response to the protests, the Secretary suspended enforcement of the TED regulations on July 24 for 45 days and announced his intention to consider alternatives such as limitations on trawling times.

On July 25, 1989, the National Wildlife Federation filed suit against the Secretary, claiming that his actions violated the ESA (including the ESA amendments of 1988), the National Environmental Policy Act, and the Administrative Procedure Act. On August 3, 1989, the U.S. District Court for the District of Columbia granted summary judgment for the plaintiffs. The court ordered the Secretary to "reinstitute existing TED regulations, or issue interim turtle conservation measures to become effective immediately." The Secretary issued the interim final rule in response to the court's order.

NOAA provided a 15 day comment period (comments were actually accepted until September 1, 1989) on the 105-minute trawling period option provided in the interim final rule. During the comment period, a total of 3,736 comments were received. Of those comments, 3,459 favored the use of TEDs and 151 opposed mandatory TEDs. Some comments did not specifically address the use of TEDs. Also, NOAA scientists estimated that full compliance with 105-minute trawl times would result in turtle mortalities unacceptably higher than would full compliance with the TED regulations. Based upon the comments received, as well as NOAA's evaluation of the 105-minute trawling period option, NOAA decided to abandon the approach of the interim rule.

The interim rule stated the "existing TED regulations may be reinstated or modified after September 7, 1989 * * * *" NOAA now reinstates the 1987 TED regulations, as amended.

Dated: September 8, 1989.

James Brenner,

Assistant Administrator for Fisheries.

For the reasons set out in the preamble, provisions of 50 CFR Parts 217 and 227 are reinstated as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for Part 217 continues to read as follows:

Authority: 16 U.S.C. 1521–1543 and 16 U.S.C. 742a *et seq.*

2. In § 217.12, the definition of *"tow time"* is reinstated in alphabetical order to read as follows:

§ 217.12 Definitions.

* * * * *

Tow time means the interval from trawl doors entering the water to trawl doors being removed from the water.

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for Part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Paragraph 227.72(e)(2), (3) and (6) are reinstated to read as follows:

§227.72(e) Exceptions to Prohibitions

* * * * *

(e) * * *

(2) *Gear requirements.* (i) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii) and (e)(2)(iv) of this section, a qualified turtle excluder device (TED) must be carried and used in each net during trawling by a shrimp trawler 25 feet or longer in length fishing for white, brown, pink, or seabob shrimp (or for rock shrimp in the Gulf of Mexico) in areas and during periods as follows (see Table 1 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year, commencing October 1, 1987.

(*2*) Atlantic Area, offshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore to 15 nautical miles—all year, commencing January 1, 1988.

(*2*) Gulf Area, offshore to 15 nautical miles—March 1 through November 30, each year, commencing March 1, 1988.

(*3*) Southwest Florida Area, offshore—all year, commencing January 1, 1989.

(*4*) Gulf Area, offshore—March 1, through November 30, each year, commencing March 1, 1989.

(ii) In the Southwest Florida and Gulf Areas a shrimp trawler fishing for or possessing royal red shrimp is exempt from the TED requirement provided that 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp.

(iii) In the Canaveral and Atlantic Areas, a shrimp trawler fishing for or possessing rock shrimp or royal red shrimp is exempt from the TED requirement provided that 90 percent of all shrimp offloaded from, or on board, the trawler are rock shrimp or royal red shrimp.

(iv) A single test net having a headrope length of 20 feet or less is exempt from the TED requirement provided that the test net is pulled immediately in front of any other net or is not connected to another net in any way.

(3) *Tow time restrictions.* (i) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler, regardless of length, fishing for white brown, pink, or seabob shrimp (or rock shrimp in or from the Gulf or Southwest Florida Areas) must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements and Maps 3 and 4 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, inshore—all year, commencing October 1, 1988.

(*2*) Atlantic Area, inshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, inshore—all year, commencing January 1, 1988.

(*2*) Gulf Area inshore—March 1 through November 30, each year, commencing March 19, 1988.

(ii) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler less than 25 feet in length fishing for white, brown, pink, or seabob shrimp must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantaic Ocean:

(*1*) Canaveral Area, offshore—all year, commencing October 1, 1987.

(*2*) Atlantic Area, offshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore to 15 nautical mile—all year, commencing January 1, 1988.

(*2*) Gulf Area, offshore to 15 nautical miles—March 1 through November 30, each year, commencing March 1, 1988.

(*3*) Southwest Florida Area, offshore—all year, commencing January 1, 1988.

(*4*) Gulf Area, offshore—March 1 through November 30, each year, commencing March 1, 1989.

(iii) In the Southwest Florida and Gulf Areas a shrimp trawler fishing for or possessing royal red shrimp is exempt from the tow time restrictions provided than 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp.

(iv) In the Atlantic and Canaveral Areas, a shrimp trawler fishing for or possessing royal red or rock shrimp is exempt from the tow time restriction provided that 90 percent of all shrimp offloaded from, the trawler are royal red or rock shrimp.

(4) * * *

(5) * * *

(6) *Prohibitions.* It is unlawful for any person to do any of the following:

(i) Fail to use a qualified TED in each net during trawling on a vessel 25 feet or longer in length in an area where and at a time when a TED is required pursuant to this part;

(ii) Fail to restrict a tow time to 90 minutes in an area and at a time such restriction applies, unless a qualified TED is being used in each net during trawling;

(iii) Land from or possess on board a vessel white, brown, pink, or seabob shrimp in quantities exceeding 10 percent of the total shrimp landed or on board after having fished for royal red shrimp (or for rock shrimp in the Atlantic Ocean) in TED required area without using a qualified TED in each net during trawling;

(iv) Fail to follow sea turtle handling and resuscitation procedures specified in paragraph (e)(1)(i) of this section; or

(v) Fail to comply with instructions and signals issued by an authorized officer. Enforcement procedures and signals used in the Gulf of Mexico shrimp fishery are listed at 50 CFR Part 658. These procedures will be used to enforce the rules of this section in all geographic areas.

3. In § 227.72(e) the title of Table 1 is reinstated to read "Table 1.—Waters Where TEDs Are Required on Shrimp Trawlers 25 Feet or Longer in Length". Table 2 is reinstated as follows:

TABLE 2.—90-MINUTE TOW TIMES [1]

Area	Start date	Season	Vessel sizes
Atlantic Ocean:			
Canaveral Area—inshore	October 1, 1988	All Year	All.
Atlantic Area—inshore	May 1, 1988	May 1 through August 1, each year	All.
Gulf of Mexico:			
Southwest Florida Area—inshore	January 1, 1988	All year	All.
Gulf Area—inshore	March 1, 1988	March 1 through November 1, each year	All.
Atlantic Ocean:			
Canaveral Area—offshore	October 1, 1987	All year	<25 feet
Atlantic Area—offshore	May 1, 1988	May 1 through August 31, each year	<25 feet
Gulf of Mexico:			
Southwest Florida Area—offshore to 15 nautical miles	January 1, 1988	All year	<25 feet
Gulf Area—offshore to 15 nautical miles	March 1, 1988	March 1 through November 30, each year	<25 feet
Southwest Florida Area—offshore	January 1, 1989	All year	<25 feet
Gulf Area—offshore	March 1, 1989	March 1 through November 30, each year	<25 feet

[1] Tow time restrictions do not apply to shrimp trawlers using a qualified TED in each net during trawling.

4. Also in § 227.72(e), the title to Map 1 is reinstated to read "Offshore Atlantic Waters Where TEDs Are Required". The title to Map 2 is reinstated to read "Offshore Gulf of Mexico Waters Where TEDs Are Required".

[FR Doc. 89-21516 Filed 9-8-89; 1:09 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 176
Wednesday, September 13, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-217-84]

RIN 1545-AH49

Golden Parachute Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to golden parachute payments.

DATES: The public hearing will be held on Friday, November 17, 1989. Outlines of oral comments must be delivered by Friday, October 27, 1989.

ADDRESSES: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS-217-84) Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn telephone (202) 566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations appearing in the Federal Register for Friday, May 5, 1989, (54 FR 19390).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, October 27, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral prsentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 89-21520 Filed 9-12-89; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3645-5]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Alternative Emission Reduction Plan for Vista Chemical Co., Westlake, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reopening of public comment period.

SUMMARY: Through this notice, EPA is reopening the comment period for a proposed rule published on June 17, 1985, at 50 FR 25093. In that notice, EPA proposed to approve a source specific SIP revision submitted by the State of Louisiana, which would allow an alternate emission reduction plan ("bubble") for a Vistal Chemical Company (formerly CONOCO) facility in Westlake, Louisiana (a community within the rural Lake Charles, Louisiana, ozone nonattainment area). Today EPA is requesting additional comment on the availability of emissions credits under the proposed trade with regard to an aspect of the trade not discussed previously.

DATE: Interested persons are invited to submit comments on this reproposed action no later than October 13, 1989.

ADDRESSES: Written comments on this proposed action should be addressed to Thomas H. Diggs of the EPA Region 6 office (address below). Copies of the State's submittals and EPA's technical review may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region 6, Air Programs Branch, Mail Code 6T-AN, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Louisiana Department of Environmental Quality, Office of Air Quality, 625 North Fourth St., Baton Rouge, Louisiana 70804-4096.

FOR FURTHER INFORMATION CONTACT: Barbara Durso at (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION: At 47 FR 15076 (April 7, 1982) EPA issued a proposed policy statement entitled "Emissions Trading Policy Statement; General Principles for Creation, Banking, and Use of Emission Reduction Credits." The statement described emissions trading, outlined EPA's criteria for review of emissions trades, and provided guidelines to aid states and industry in meeting these requirements. On December 4, 1986, EPA issued a revised policy statement. The December policy stated that for pending bubbles "in other areas (i.e., in areas not classified as urban nonattainment) these bubbles must show that applicable standards, increments, and visibility requirements will not be jeopardized. Pending bubbles which meet these tests and all other applicable requirements of the 1982 policy will be processed for approval."[1]

In accordance with the then applicable Emissions Trading Policy Statement, the State of Louisiana submitted a revision to its SIP to EPA on November 22, 1983. This SIP revision authorized Vista Chemical Company's use of a bubble to bring two oil-water separators and two alcohol plant batch oxidation reactors into compliance with the applicable State regulations. EPA proposed to approve this bubble in the Federal Register [2] but has not taken

[1] 51 FR 43840.

[2] 50 FR 25093 (June 17, 1985).

final action on the State's submittal to date. EPA received comments from one party which will be addressed when the final action is taken on the trade.

In reviewing the matter EPA has uncovered an issue that was not raised during the original comment period. We now solicit comments on this issue.

The subject of interest is ozone formation and how hydrocarbons contribute to ozone formation. The issue of concern is the contribution of halogenated versus nonhalogenated hydrocarbons to excessive ambient ozone concentrations.[3] Halogenated and nonhalogenated hydrocarbons contribute to ozone pollution in the following fashion: Nitrogen dioxide strongly absorbs ultraviolet radiation from the sun causing molecular dissociation of NO_2. The resulting atomic oxygen quickly combines with molecular oxygen in a three-body reaction, forming ozone (O_3). Some of the NO formed reacts with volatile organic compounds (VOCs) which removes the opportunity for some of the O_3 to react with NO to form NO_2 and O_2. When this opportunity is removed, the O_3 that would have reacted with NO remains in the ambient air and results in elevated O_3 concentrations. In simpler terms, VOCs take away the opportunity for ozone to self-destruct.

Now, as related to VOCs, it was thought in the past that halogenated VOCs and nonhalogenated VOCs had different reactivity rates with NO: that is, the nonhalogenated VOCs were thought to react more quickly and easily with NO than the halogenated hydrocarbons. However, EPA has never treated halogenated VOCs as a class differently from nonhalogenated VOCs. With a few receptions, EPA believes all VOCs should be regulated equally and, in emissions trades, generally considers VOCs as a single pollutant that may be traded on a pound-for-pound basis.[4]

When the State of Louisiana adopted Louisiana Air Quality Regulation 22.8 to control hydrocarbon emissions from waste gas streams, it used a different approach. LAQR 22.8(a) requires that nonhalogenated hydrocarbons be burned at 1300 °F for 0.3 seconds or greater in a direct-flame afterburner or an equally effective device, but LAQR 22.8(b) allows halogenated hydrocarbons to be simply flared without specifying flame temperature and residence time for burning. By devising two regulatory requirements, one could infer that the State considers these two types of VOCs as inherently different with regard to controlling ambient ozone concentrations.

Complicating matters, EPA approved LAQR 22.8(a) as part of Louisiana's 1979 ozone SIP for the Lake Charles area, but took no action on LAQR 22.8(b) when it was submitted by the State, apparently because it misunderstood the nature of the obligation the regulation imposed.[5] As a result, Louisiana regulates halogenated and nonhalogenated VOCs as "different" pollutants under LAQR 22.8, but EPA only recognizes the regulation of nonhalogenated VOCs under the Federally approved SIP.

The waste stream at issue includes halogenated and nonhalogenated VOCs, and Vista incinerates them both. Under the proposed bubble, Vista would receive credit for destroying the halogenated VOCs in the waste stream (regulated under LAQR 22.8(b) but not under the SIP). These credits would then be aplied to another waste stream within the facility to satisfy its requirement to destroy nonhalogenated VOCs (imposed by LAQR 22.8(a) and the SIP). There are no surplus emissions under the State's regulations, but there are under the SIP. Whereas the State regulates the two components of the single waste gas stream as two different entities, the federally approved SIP only regulates the nonhalogenated component. However, EPA policy does not recognize that the two components are necessarily different with regard to ozone control.

To summarize the problem, there is a conflict between the two concepts and there exist arguments for and against granting these credits. EPA wants to solicit comments on what the public thinks is the appropriate decision and why. The various arguments for or against the bubble are described below.

To approve the credits could be possible under this argument: The credits are available because LDEQ 22.8(b) was not Federally approved at the time of bubble submittal and therefore, there was no requirement under the SIP to incinerate the halogenated hydrocarbons in the waste stream. Thus, this incineration went beyond the requirements of the SIP. Furthermore, since NESHAP does not require control of oxyvents, these credits would be valid.

To disapprove the credits could be possible under another argument: The required control of the nonhalogenated compounds in the stream necessarily results in the control of the halogenated compounds in that same waste stream because the two kinds of compounds are inseparable. The concept of splitting the stream into halogenated and nonhalogenated hydrocarbons for the purpose of control is abstract and theoretical, but not practical or maybe even not possible. Thus there is no alternative for the company but to incinerate the halogenated hydrocarbons when it is fulfilling its duties to incinerate the nonhalogenated hydrocarbons; therefore, it is not going beyond the requirements of the SIP.

Yet another argument could be made as follows: Assumning that the State's implied difference between halogenated and nonhalogenated VOCs with regard to the NO–O_3 is legitimate, then halogenated and nonhalogenated VOCs would be considered different pollutants under this regulation. Because the emissions trading policy limits trades to like pollutants, one could trade a pound of halogenated VOCs for a pound of halogenated VOCs but not for a pound of nonhalogenated VOCs. This argument would work against this particular trade but would open the way for other trades.

Proposed Action

EPA is reopening the comment period on a proposed approval of a bubble for Vista Chemical as published at 50 FR 25093 to solicit comment on an aspect of the proposal that was not set out for comments previously.

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

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[3] Halogenated hydrocarbons are compounds composed of hydrogen, carbon, and at least one halogen atom (e.g., fluorine, chlorine, bromine, iodine). A related term is "volatile organic compounds" (VOCs). VOCs are hydrocarbons, either halogenated or not, that vaporize easily. The terms "hydrocarbon" and "VOC" are often used interchangeably.

Another term the reader should be familiar with its "photochemically reactive" which refers to how easily the VOC participates in the NO-O_3 cycle. EPA recognizes that some VOCs do not participate in the NO-O_3 cycle and terms these VOCs "negligibly photochemically reactive." To date, EPA has designated only 15 compounds as negligibly photochemically reactive. These 15 compounds are also known as "exempt VOCs."

[4] EPA has declared 15 VOCs to be negligibly photochemically reactive in a series of policy statements published in the Federal Register. Of these 15 compounds, 13 are halogenated. See 42 35314 (July 8, 1977), 44 FR 32042 (June 4, 1979), 45 FR 32424 (May 16, 1980), 45 FR 48941 (July 22, 1980), and 54 FR 1987 (January 18, 1989).

[5] 47 Fr 6016 (February 10, 1982).

List of Subjects in 40 CFR Part 52

Air pollution, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7642.
Dated: September 5, 1989.

Robert E. Layton Jr.,
Regional Administrator.

[FR Doc. 89–21500 Filed 9–12–89; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 81

[FRL–3645–4, TN–077]

Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of Knox County for Total Suspended Particulates

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On May 16, 1989, the State of Tennessee requested redesignation of that portion of Knox County within downtown Knoxville from unclassified to attainment for total suspended particulates. Today, EPA is proposing approval of the change in attainment status.

DATES: To be considered, comments must reach us on or before October 13, 1989.

ADDRESSES: Written comments should be addressed to Rosalyn Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the State's submittal are availabe for review during normal business hours at the following locations:

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Knox County Air Pollution Control Department, City/County Building, 400 Main Avenue, Suite L222, Knoxville, Tennessee 37902

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

FOR FURTHER INFORMATION CONTACT: Rosalyn Hughes, EPA Region IV Air Programs Branch, at the address listed above and phone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On May 16, 1989, the State of Tennessee submitted Board Order 04–89, reclassifying Knox County from unclassifiable to attainment for TSP. The local agency, the Knox County Department of Air Pollution Control, submitted eight consecutive quarters of the most recent ambient air quality data to support their request for reclassification. The State of Tennessee reviewed the Knox County request and on May 10, 1989 adopted Board Order 04–89 approving the reclassification request. The State then submitted the redesignation request, in the form of a Board Order, to EPA.

Proposed Action

EPA reviewed the request along with the monitoring which revealed no violations of the TSP National Ambient Air Quality Standards and found it to meet present EPA requirements. Therefore, EPA is today proposing to approve the redesignation of Knox County from unclassified to attainment for TSP and is soliciting public comment on it. EPA will consider all comments received within thirty days of publication of this notice.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: August 30, 1989.

Joe R. Franzmathes,
Acting Regional Administrator.

[FR Doc. 89–21501 Filed 9–12–89; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 271

[FRL–3645–6]

Rhode Island; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination for Final Authorization on Application of Rhode Island for Program Revision and Public Comment Period.

SUMMARY: Rhode Island has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (EPA) has reviewed Rhode Island's application and has made a tentative determination, subject to public review and comment, that Rhode Island's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Rhode Island's hazardous waste program revisions. Rhode Island's application for program revision is a available for public review and comment.

DATES: Comments on Rhode Island's program revision application must be received by the close of business on October 13, 1989.

ADDRESSES: Copies of Rhode Island's program revision application are available 8:30 a.m. to 4:00 p.m. Monday thru Friday at the following addresses for inspection and copying: R.I. Department of Environmental Management, Division of Air and Hazardous Materials, 291 Promenade Street, Providence, Rhode Island 02908–5767, Phone: (401) 277–2797; U.S. EPA Headquarters Library, PM–211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382–5926; U.S. EPA Region I Library, JFK Federal Building, Room 1500, Boston, Massachusetts 02203, Phone: (617) 565–3300. Written comments on the application should be sent to Frank Battaglia, at the address below.

FOR FURTHER INFORMATION CONTACT: Frank Battaglia, NH & RI Waste Management Branch, U.S. EPA, HSR–CAN5, JFK Federal Building, Boston, Massachusetts 02203, Phone: (617) 573–9643.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under

section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

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

B. Rhode Island

Rhode Island initially received Final Authorization of its hazardous waste program on January 31, 1986 (51 FR 3780, January 30, 1986). On April 3, 1989 Rhode Island submitted a final program revision application for non-HSWA requirements promulgated through June 30, 1985. Today, Rhode Island is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(4). Specific provisions which are included in the Rhode Island Program Authorization Revision made today are listed in Table I below.

The State of Rhode Island submitted an initial draft application for the revision of its authorized hazardous waste program on March 9, 1987. After review of this application Rhode Island was placed on a schedule of compliance to obtain program modifications for the redefinition of solid waste on April 8, 1987 (52 FR 11263). A final program revision application was received on April 3, 1989. Today, Rhode Island is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(4).

TABLE I.—PROVISIONS COVERED BY THIS PROGRAM AUTHORIZATION REVISION

Federal requirement	State authority
1. Biennial Report, 48 FR 3977–3983, January 28, 1983.	Rule 5.05[1] Rule 5.06. Rule 7.01(E). Rule 9.10. Rule 9.14. Rule 9.22.
2. Permit Rules: Settlement Agreement, 48 FR 39622, September 1, 1983.	Rule 8.01(B) Rule 8.01(C). Rule 2.02.
3. Interim Status Standards—Applicability, 48 FR 52718–52720, November 22, 1983 and 49 FR 46095, November 21, 1984.	Rule 7.01(E)
4. Chlorinated Allphatic Hydrocarbon Listing, 49 FR 5312–5313, February 10, 1984.	Rule 3.25. Rule 3.69.
5. National Uniform Manifest, 49 FR 10490–10510, March 20, 1984.	Rule 3.45. Rule 5.03(B). Rule 5.03(C) Rule 5.03(G).
6. Permit Rules—Settlement Agreement, 49 FR 17716–17719, April 24, 1984.	Rule 7.09(G)
7. Correction to Test Methods Manual, 49 FR 47391, December 4, 1984.	Rule 5.08. Rule 9.21.
8. Satellite Accumulation, 49 FR 49571–49572, December 20, 1984.	Rule 5.02.
9. Redefinition of Solid Waste, 50 FR 614–68, January 4, 1985.	Rule 3.05. Rule 3.15. Rule 3.25. Rule 3.34. Rule 3.36. Rule 3.69. Rule 7.01(A)(2). Rule 7.01(E). Rule 11.00.
10. Interim Status Standards for Landfills, 50 FR 16044–16048, April 23, 1985.	Rule 7.01(E).
11. RCRA Section 3006(F): Availability of Information, 40 CFR Part 2 Subpart A, 5 U.S.C. § 552	RIGL 38–2–2.[2] RIGL 38–2–3. RIGL 38–2–4. RIGL 38–2–7. RIGL 38–2–8. RIGL 38–2–9. RIGL 42–92.

[1] Rules and Regulations for hazardous waste generation, transportation, treatment, storage and disposal.
[2] Rhode Island General Law (RIGL).

EPA has reviewed Rhode Island's application, and has made a tentative determination, subject to public review and comment, that Rhode Island's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. EPA recognizes Rhode Island's limitations on the award of reasonable attorney fees and other litigation costs to a party who substantially prevails in judicial review of an agency action, as specified at Section 552(a)(4)(E) of the Freedom of Information Act, 5 U.S.C. 552(a)(4)(E). The Agency interprets section 3006(f) of RCRA 42 U.S.C. 6926(f), as requiring Rhode Island to have authority equivalent to 5 U.S.C. 552(a)(4)(E), in order to provide for the availability of hazardous waste information "in substantially the same manner, and to the same degree" as EPA. Rhode Island General Law 42–92, entitled "Equal Access to Justice for Small Businesses and Individuals," provides for the award of reasonable litigation expenses when a small business or individual prevails in contesting an agency action. Parties eligible for such award are defined as: "Party" means any individual whose net worth is less than two hundred fifty thousand dollars ($250,000) at the time the adversary adjudication was initiated; and, any individual, partnership, corporation, association, or private organization doing business and located in the state, which is independently owned and operated, not dominant in its field, and which employs one hundred (100) or fewer persons at the time the adversary adjudication was initiated. R.I.G.L. 42–92–2(a)

It is the Region's opinion that Rhode Island's limitations on parties eligible for award of litigation costs does not place an undue burden on the public seeking information from state agencies. R.I.G.L. 42–92 serves the purpose of encouraging parties who are least able financially to contest unjust actions by state agencies. The law eliminates the significant disincentive of legal costs facing small business and individuals who want to challenge an agency's decision to withhold documents. Furthermore, Rhode Island asserts that R.I.G.L. 42–92 provides relief to most of the parties covered by 5 U.S.C. 552(a)(4)(E). In Rhode Island's program revision application, the Attorney General writes: "The universe of non-small businesses and non-individuals for purposes of this statute is very small." Finally, the Region believes that a certain amount of flexibility with regard to such state procedural requirements is allowable in evaluating whether Rhode Island makes hazardous waste information available to the public "in substantially the same manner" as EPA. Consequently, EPA intends to grant Rhode Island Final Authorization for the additional program modification in Table I. EPA solicits comments on this proposed decision.

The public may submit written comments on EPA's decision until October 13, 1989. Copies of Rhode Island's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

EPA will consider all public comments on its proposed decision received during the public comment period. Issues raised by those comments may be the basis for a decision to deny authorization of the program revision to Rhode Island.

Approval of Rhode Island's program revision shall become effective when the Regional Administrator's final approval is published in the **Federal Register.** If adverse comment(s) pertaining to Rhode Island's program revision discussed in this notice is received, EPA will publish either (1) a notice of disapproval or (2) a final rulemaking approving the modification, which will include a summary of the reasons for hte final decision and a response to all major comments.

Rhode Island is not seeking authorization to operate on Indian Lands.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Rhode Island's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities, and therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

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

Dated: August 9, 1989.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 89-21499 Filed 9-12-89; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 54, No. 176
Wednesday, September 13, 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.

CIVIL RIGHTS COMMISSION

Alaska Advisory Committee; 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 Alaska Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 12 noon on October 5, 1989, at the Federal Building, 701 C Street (Room 130), Anchorage, Alaska 99513. The purpose of the meeting is to develop a proposal for a new study on employment issues and to discuss follow-up activities to the Committee's published report on minority and womens' business enterprise programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Daniel Alex 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 office at least five (5) working days before the schedule 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, September 5, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–21476 Filed 9–12–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Current Industrial Reports (Wave II Mandatory)
Form Number: Various
Agency Approval Number: 0607–0395
Type of Request: Revision of a currently approved collection
Burden: 28,217 hours
Number of Respondents: 37,696
Avg Hours Per Response: 45 minutes
Needs and Uses: The Current Industrial Reports Program (CIR) is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Many government agencies use the data for industrial analysis, projections, and monitoring import penetration. Private business firms and organizations use the data for trend projections, market analysis, product planning, and other economic and business-oriented analysis.
Affected Public: Businesses or other for-profit organizations
Frequency: Monthly, quarterly, and annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 8, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–21518 Filed 9–12–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Current Industrial Reports (Wave II Voluntary)
Form Number: Various
Agency Approval Number: 0607–0206
Type of Request: Revision of a currently approved collection
Burden: 12,728 hours
Number of Respondents: 22,496
Avg Hours Per Response: 34 minutes
Needs and Uses: The Current Industrial Reports Program (CIR) is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Many government agencies use the data for industrial analysis, projections, and monitoring import penetration. Private business firms and organizations use the data for trend projections, market analysis, product planning, and other economic and business-oriented analysis.
Affected Public: Businesses and other for profit organizations
Frequency: Monthly, Quarterly, and Annually
Respondent's Obligation: Voluntary, (Monthly and Quarterly responses) Mandatory (Annual responses)
OMB Desk Officer: Don Arbuckle 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 8, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–21519 Filed 9–12–89; 8:45 am]

BILLING CODE 3510–07–M

National Oceanic and Atmospheric Administration

Marine Mammals; Permit Modification Request; Southwest Fisheries Center, NMFS (P77#33)

Notice is hereby given that the Southwest Fisheries Center, National Marine Fisheries Service has requested a modification of Permit No. 680 issued on August 16, 1989 (54 FR 35221), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit authorizes the taking of tissue samples by biopsy dart from up to 80 individuals/yr for three years of 30 stocks of marine mammals in the Eastern Tropical Pacific. The Permit Holder is requesting authorization to include authorization to collect tissue samples by biopsy dart from up to 80 individuals/yr for three years each, the Costa Rican form of the spinner dolphin (*Stenella longirostris*) and the coastal form of the spotted dolphin (*Stenella attenuata*) to the stocks already authorized.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, Silver Spring Metro Center 1, 1335 East-West Highway, Room 7330, Silver Spring, Maryland 20910, within 30 days of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

The modification request and associated documents are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Room 7330, Silver Spring, MD 20910; Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731–7451; and Administrator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396.

Dated: September 7, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89–21456 Filed 9–12–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permit Modifications; Theater of the Sea (P92 and P92B); Dolphin Research Center (P53B); Dolphins Plus, Inc. (P234 and P234A)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), public display permit Nos. 69 and 326 issued to Theater of the Sea, Inc., Islamorada, FL, No. 514 issued to Dolphin Research Center, Marathon, FL, Nos. 292 and 577 issued to Dolphins Plus, Inc., Key Largo, FL are modified by adding the following Special Conditions on swin-with-the-dolphin programs.

The National Marine Fisheries Service (NOAA Fisheries) informed the permit holders of these Special Conditions on August 25, 1988. A public hearing was requested under § 216.33(d), but the request was subsequently withdrawn. In the interim, permit holders have continued to provide quarterly reports and other information required by the Special Conditions. Thus, the effective date of these modifications is September 30, 1988. Notice of these modifications inadvertently was not published at that time.

Since the authority to use marine mammals in swim-with-the-dolphin programs expires on December 31, 1989 (Special Condition D.1.), NOAA Fisheries intends to decide whether to continue such authority at that time. To assist us in making a decision on the future of swim-with-the-dolphin programs, NOAA Fisheries is preparing an environmental impact statement under the National Environmental Policy Act of 1969 (See 54 FR 20170, May 10, 1989).

Documents concerning the above modifications and permits are available for inspection in the Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Room 7324, 1335 East-West Highway, Silver Spring, Maryland 20910.

Dated: September 7, 1989.

Nancy Foster,

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

Section D. Special Conditions on Human/Dolphin Swim Programs

D. 1. The Permit Holder is authorized to use dolphins in an experimental human/dolphin swim program until December 31, 1989. The National Marine Fisheries Service (NMFS) may revoke this authority before December 31, 1989 if this program is found to have an adverse effect on the health or well-being of the animals, if an ongoing review of public display permit authorities, procedures and criteria results in new regulations that disallow such programs, or if the terms of the following conditions are not being met.

D. 2. The Permit Holder must identify the individual animals to be used in the program and submit: (a) A detailed description of the planned human/dolphin swim program, including (1) descriptions of the planned nature of the human/dolphin encounters and the anticipated maximum, minimum, and average frequency and duration of encounters per animal, per day, and per week, and (2) the content and planned methods for conducting the preencounter orientation and instructions for human swimmers regarding, among other things, any restrictions on physical contact with the dolphins and proper response in the event of aggressive dolphin behavior; (b) a detailed description of the facilities that will be used to house the dolphins and to conduct the human/dolphin swim program, and how the dolphins have been or will be trained to participate in the program; (c) curriculum vitae for the dolphin trainers, the attending veterinarian(s), and any other persons responsible for handling, feeding or otherwise insuring the welfare of the animals; and (d) an assessment by the attending veterinarian of the current (baseline) health and behavior patterns of each animal and a description of the monitoring program that will be used to detect and determine the cause(s) and significance of any changes in the health or behavior of the dolphins as a result of the authorized activities.

D. 3. Human/dolphin swim operations must be continuously supervised by experienced trainers. An appropriately qualified and locally available veterinarian must be on call, but not necessarily present, during each human/dolphin encounter. The animals must be provided with adequate escape access from the swimming area should they choose to terminate the human/dolphin encounter and adequate security arrangements must be provided at all times to prevent harrassment or injury

to the dolphins. NMFS may inspect facilities and monitor swim operations.

D. 4. The Permit Holder must develop and implement a monitoring program to detect any changes in the health or behavior of the animals involved in the human/dolphin swim program. Animals that respond adversely to encounters with humans must be removed from the program until such time as their health is restored and/or their behavior poses no risk to humans involved in the program. The program must be suspended immediately if the dolphins show signs of program-related health problems or undesirable behavioral modifications that are a result of the human/dolphin swim program.

D. 5. The Permit Holder must advise NMFS immediately of any injuries to dolphins or humans resulting from the authorized activities, any program changes that might cause additional stress or otherwise have an adverse effect on the health or behavior of the dolphins involved in the program, and any removals or additions of animals to the program and the reasons for such removals or additions. In addition, the Permit Holder must submit quarterly reports describing the nature and extent of the program in the preceding quarter, any problems that may have developed, and steps taken to overcome such problems. Among other things, the quarterly progress report should provide: (a) Summary statistics on (1) the number of people by age and sex that participated in the program during the reporting period and (2) the number of times, by day and week, that each dolphin participated in the program; (b) descriptions of any encounters that resulted in, injury to a human or dolphin and any changes made in the program to improve the safety, educational or other aspects of the program; and (c) a brief summary and assessment of the results of the required dolphin monitoring program. Reports must be submitted to the Director, Office of Protected Resources and Habitat Programs, NMFS, Washington, DC 20235. Failure to submit adequate and timely reports may result in revocation of the Permit Holder's authority to use dolphins in an experimental human/dolphin swim program.

D. 6. By authorizing this experimental program, NMFS assumes no liability for physical or other injuries or harm to individuals participating in the experimental human/dolphin swim program. This fact must be reflected in any liability waivers or program instructions prepared by and for the Permit Holder.

[FR Doc. 89-21457 Filed 9-12-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

AGENCY: Under Secretary of Defense (Acquisition).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming planning meeting for a Defense Manufacturing board project on concurrent engineering.

DATE AND TIME: 25 Sep 89, 0900-1500.

ADDRESS: Institute for Defense Analysis, 1801 N. Beauregard, Room 218S, Alexandria, VA 22311.

The agenda for the meeting will include an overview of Department of Defense activity in the general area of concurrent engineering.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Fitzpatrick of the DMB Secretariat, (202) 697-0957.

Dated: September 6, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-21455 Filed 9-12-89; 8:45 am]

BILLING CODE 3810-01-M

DELAWARE RIVER BASIN COMMISSION

Amendment to Comprehensive Plan and Water Code of the Delaware River Basin: Correction

AGENCY: Delaware River Basin Commission.

ACTION: Notice.

In notice document 89-13360 beginning on page 24381 in the issue of Wednesday June 7, 1989, make the following correction: On page 24382, in the first column, in section 2.1.5(3), the last sentence should read: "Plumbing fixtures and fittings shall be labeled in accordance with ANSI A112.18.1M and ANSI A112.19.2M."

Delaware River Basin Compact, 75 Stat. 688

Dated: September 6, 1989.

Susan M. Weisman,

Secretary.

[FR Doc. 89-21477 Filed 9-12-89; 8:45 am]

BILLING CODE 6360-01-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 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 October 13, 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: September 7, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Existing

Title: Final Performance Report for Library Services and Construction Act, Title VI

Frequency: Annually

Affected Public: State of local governments

Reporting Burden: Responses, 250; *Burden Hours,* 250; *Recordkeeping Burden: Recordkeepers,* 0; *Burden Hours:* 0

Abstract: This report is used by State and local Libraries that have participated in the Library Literacy Program are to submit these reports to the Department. The Department uses this information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Educational Research and Improvement

Type of Review: Existing

Title: Application for Grants Under the Research Grant Program: Teachers as Researchers Program

Frequency: Annually

Affected Public: Individuals or households; State or local governments

Reporting Burden: Responses, 400; *Burden Hours:* 12,000; *Recordkeeping Burden: Recordkeepers,* 0; *Burden Hours:* 0

Abstract: This application will be used by individuals or households and State or local governments to improve educational practices or policies under the Teachers as Researchers Program. The Department uses the information to make grant awards.

Office of Special Educational Rehabilitative Services

Type of Review: Extension

Title: Preschool Grants Program under the Education of the Handicapped Act

Frequency: Annually

Affected Public: State or local government

Reporting Burden: Responses, 57; *Burden Hours:* 57; *Recordkeeping Burden: Recordkeepers,* 0; *Burden Hours:* 0

Abstract: This form will be used by State agencies to apply for funding under the Preschool Grants Program. The Department will use this information to make grant awards.

[FR Doc. 89-21446 Filed 9-12-89; 8:45 am]

BILLING CODE 4000-1-M

Notice of 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 October 6, 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. 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: September 7, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited.

Title: TeleCaption 4000 Rebate Officer.

Abstract: This form will be used by consumers to receive a rebate offer for purchasing the telecaption decoder. The National Captioning Institute, (NCI) funded by the Department will use the information to verify purchase of the decoder in order to mail the rebate to the consumer.

Additional Information: An expedited review is requested for this rebate certificate to allow NCI sufficient time to print and distribute the certificates to potential customers in a timely manner. This rebate offer is scheduled to expire on December 31, 1989. Allowing for the normal review period would adversely affect timely implementation of this project.

Frequency: Annually.

Affected Public: State or Local Governments.

Reporting Burden:

Responses: 57

Burden Hours: 57

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

BILLING CODE 4000-01-M

OMB Form No._____
Approval Expires_____

TeleCaption 4000 $20 Limited Rebate Offer

To receive your TeleCaption 4000 decoder rebate, you must do the following:

1. Purchase a TeleCaption 4000. Complete this rebate certificate. No reproduction of this certificate will be honored.

2. Enclose a copy of the dated sales slip with purchase price circled.

3. Enclose the word "TeleCaption 4000" cut from the top of the shipping carton.

4. Mail to: TeleCaption Rebate Offer, National Captioning Institute.

5. Complete the questions below:

   This is my first TeleCaption decoder purchase.

   Yes _____ No _____

   Name of the store where TeleCaption was purchased.

   _____

Please send my $20.00 rebate to:

_____
NAME (Please print)

_____
ADDRESS

_____
CITY STATE ZIP

This is a mail-in offer and is not payable at retail stores.

Offer expires December 31, 1989. All requests must be postmarked by January 15, 1990. Please allow eight weeks to receive your rebate. Offer good in USA and its territories only, and is void where prohibited, taxed, or restricted by law. Only one refund per family/address, group, or organization. Request from dealers or others who are not retail customers will not be honored.

Funds for this activity are provided by the U.S. Department of Education.

[FR Doc. 89-21445 Filed 9-12-89; 8:45 am]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89-627-000, et al.]

Florida Power Corporation, et al.; Electric rate, Small Power Production, and Interlocking Directorate Filings

September 5, 1989.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER89-627-000]

Take notice that on August 30, 1989, Florida Power Corporation (Florida Power) tendered for filing (1) new All Requirements Electric Service Agreements between Florida Power and the City of Wauchula, The Town of Havana, the City of Bartow, and the City of Newberry, all located in Florida; and (2) a rate decrease based on a prefiling Settlement Agreement between Florida Power and all of its wholesale and transmission customers, including the City of Wauchula, Town of Havana, the City of Bartow, and the City of Newberry.

Comment date: September 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Light and Power Company

[Docket No. ER89-631-000]

Take notice that on August 31, 1989, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed Sales Agreement with Respect to Base Load/Pumped Storage Units, for a four-year sale of entitlements in a group of units from CL&P's generating system, for service to Boston Edison Company (Buyer).

CL&P states that the Sales Agreement provides for a sale of capacity and energy from CL&P's base Load/Pumped Storage Units (the Units) during the period November 1, 1989 to October 31, 1993. CL&P states that the rates for the proposed service are based on cost-of-service formulas. CL&P requests that the Commission permit the Sales Agreement to become effective as of November 1, 1989.

CL&P states that a copy of the Sales Agreement has been mailed or delivered to buyer and to the Massachusetts Department of Public Utilities.

Comment date: September 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Company

[Docket No. EL89-50-000]

Take notice that on August 31, 1989, Golden Spread Electric Cooperative, Inc. (Golden Spread) tendered for filing a complaint against Southwestern Public Service Company (SPS). Golden Spread submits that the wholesale rates charged by SPS are grossly excessive. Golden Spread further states that based upon a fully allocated cost of service analysis, that the rate SPS is seeking to maintain in effect will yield a return on equity of 28%. Golden Spread requests that the Commission: (1) Initiate an investigation into the justness and reasonableness of the full requirements rate of SPS, (2) establish hearing procedures on SPS' full requirements rate and require SPS to show why the full requirements rate is not unjust and unreasonable, (3) establish lower, just and reasonable rates for full requirements customers of SPS, (4) establish a refund effective date in this proceeding at the earliest date permitted by law and (5) grant such other relief as the Commission finds appropriate.

Comment date: October 5, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Connecticut Light and Power Company

[Docket No. ER89-629-000]

Take notice that on August 31, 1989, Connecticut Light and Power Company (CL&P) tendered for filing a Sales Agreement with respect to Slice-Of-Systems Units, for a five-year sale of entitlements in a group of units representative of CL&P's generating system, for service to Fitchburg Gas and Electric Light Department (Buyer).

CL&P states that the Sales Agreement provides for the sale of capacity and energy from CL&P's Slice-of-System Units (the Units) during the period November 1, 1989 to October 31, 1994. CL&P states that the rates for the proposed service are based on cost-of-service formulas. CL&P requests that the Commission permit the Sales Agreement to become effective on November 1, 1989.

CL&P states that a copy of the Sales Agreement has been mailed or delivered to Buyer and to the Massachusetts Department of Public Utilities.

Comment date: September 18, 1989, in accordance with Standard Paragraph E end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER89-630-000

Take notice that on August 31, 1989, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to fourteen of its Rate Schedules:

Rate schedule no.	Supplement no.	Person receiving service
55	8	Philadelphia Electric Company (PECO)
56	8	Public Service Electric and Gas Company (Public Service)
57	8	Northeast Utilities (NU)
62	8	Orange and Rockland Utilities, Inc. (O&R)
69	5	NU
70	3	Niagara Mohawk Power Corporation (Mohawk) and Pennsylvania Power & Light Company (PP&L)
71	3	New England Power Co. (NEP)
74	6	PP&L
75	7	GPU Service Corporation (GPU)
78	8	Power Authority of the State of New York (the Power Authority)
82	4	Baltimore Gas & Electric Company (BG&E)
83	4	Atlantic City Electric Company (Atlantic)
84	4	Connecticut Municipal Electric Energy Cooperative (CMEEC)
88	3	Boston Edison (BE)
95	1	Long Island Lighting Company (LILCO)

The Supplements provide for an increase in rate from 2.4 mills to 2.5 mills per Kwh of interruptible transmission of power and energy over Con Edison's transmission facilities, thus increasing annual revenues under the Rate Schedules by a total of $21,961.10. Con Edison has requested waiver of notice requirements so that the Supplements can be made effective as of September 1, 1989.

Con Edison states that copies of this filing have been served by mail upon PECO, Public Service, NU, O&R, Mohawk, PP&L, NEP, GPU, the Power Authority, BG&E, Atlantic, CMEEC, BE and LILCO.

Comment date: September 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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. 89-21514 Filed 9-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-132-003]

El Paso Natural Gas Co.; Compliance Tariff Filing

September 6, 1989.

Take notice that on August 30, 1989, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with the Letter Order dated August 1, 1989 at Docket Nos. RP89-132-001 and 003, certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that on May 12, 1989, as supplemented May 26, 1989, at Docket No. RP89-132-000, *et al.*, El Paso tendered for filing with the Commission certain tariff sheets in compliance with ordering paragraphs (A)(1) and (2) of the Commission's order issued April 28, 1989 at Docket Nos. RP89-132-000, RP88-184-000, RP88-184-001 and TA88-1-1-33-000. By the Letter Order dated August 1, 1989 at Docket Nos. RP89-132-001 and 003, the Commission accepted such tariff sheets, effective May 1, 1989, subject to refund and conditions. The Commission directed El Paso to refile certain tariff sheets to (i) remove certain vague language regarding the definition of buyout and buydown costs and (ii) clarify the period interest can be charged. Accordingly, El Paso tendered tariff sheets in compliance with such directives.

El Paso requested, pursuant to Section 154.51 of the Commission's Regulations, that waiver of the notice requirements of Section 154.22 of the Commission's Regulations be granted, to the extent necessary, so as to permit the tendered tariff sheets to become effective May 1, 1989, the same date as authorized in the Commission's August 1, 1989 Letter Order.

Copies of this filing were served upon all parties of record in Docket Nos. RP89-132-000, RP88-184-000 and TA88-1-33-000 and, otherwise upon all interstate pipeline system sales customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before Sept. 13, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21451 Filed 9-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-9-4-000]

Granite State Gas Transmission, Inc.; Tariff Filing

September 6, 1989.

Take notice that on August 30, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following revised tariff sheet in its FERC Gas Traiff, First Revised Volume No. 1, for effectiveness on July 1, 1989:

Substitute Second Revised Sheet No. 7-C

According to Granite State, the instant filing is submitted pursuant to a Letter Order issued July 7, 1989 accepting a filing made on June 14, 1989 tracking take-or-pay charges billed to Granite State by Tennessee Gas Pipeline Company (Tennessee) under Order No. 500 procedures. It is further stated that Granite State's filing was accepted subject to a condition that it be modified to reflect any changes ordered by the Commission in Tennessee's underlying filing. It is further stated that the instant filing tracks the modifications in Tennessee's filing which were accepted by the Commission on August 7, 1989 in Docket No. RP88-191-011.

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 September 13, 1989. Protests will be considered by the Comission 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. 89-21450 Filed 9-12-89 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-35-005]

Midwestern Gas Transmission Co.; Rate and Tariff Filing Pursuant to Stipulation and Agreement

September 6, 1989.

Take notice that on August 30, 1989, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, tendered for filing the following Tariff Sheets to its First Revised FERC Gas Tariff Volume Nos. 1 and 2, proposed to be effective September 1, 1989:

First Revised Volume No. 1

First Revised Sheet Nos. 1 and 5
Original Sheet Nos. 32-59
First Revised Sheet Nos. 61-62, 64-66
Original Sheet Nos. 62A-62G, 64A
Original Sheet Nos. 85, 86-109, 117-119
Original Sheet Nos. 120-159

First Revised Volume No. 2

First Revised Sheet No. 60
First Revised Sheet Nos. 85-86

Midwestern states that the filing implements the terms of a Stipulation and Agreement filed by Midwestern in Docket No. RP89-35 on August 29, 1989 (the Stipulation), pursuant to which Midwestern agreed to file reduced interim rates for existing sales and certificated transportation services based upon the settlement cost of service and original and revised tariff sheets to established the terms and conditions under which Midwestern will

conduct blanket open-access transportation under Order No. 500 and part 284 of the Commission's Regulations. Midwestern states that the filing includes tariff sheets for Rate Schedules FT and IT, including initial rates for such service, General Terms and Conditions for FT and IT, and Forms of Service Agreements. Midwestern states that it intends to provide open-access transportation pursuant to section 311 of the Natural Gas Policy Act and part 284, subpart B of the Commission's Regulations, effective September 18, 1989, assuming acceptance of the instant tariff filing.

Midwestern requests the Commission to waive the thirty-day notice requirement of §154.22 to the extent necessary to allow the interim rates and part 284 terms and conditions to become effective as of September 1, 1989. Midwestern also requests waiver of § 284.10 of the Commission's Regulations pending Commission approval of the Stipulation.

Any person desiring to be heard or to protest this 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 the requirements of Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1989. Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21452 Filed 9-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-2013-000]

Natural Gas Pipeline Co. of America; Application

September 1, 1989.

Take notice that on August 28, 1989, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-2013-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon partially firm sales service to Associated Natural Gas Company, a division of Arkansas Western Gas Company, (Associated), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Associated, it is said, has elected to convert 1,000 Mcf per day of firm sales entitlements to firm transportation service pursuant to § 284.10 of the Commission's Regulations. Applicant seeks approval to permanently abandon that portion of its certificated sales obligation to Associated which was converted to firm transportation service.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment. Accordingly, any person desiring to be heard or any person, other than the converting customer, desiring to make any protest with reference to said application should on or before September 22, 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 or 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 Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21449 Filed 9-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-222-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 6, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on August 30, 1989, tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 25A
Original Sheet No. 25B
Original Sheet No. 25C
Original Sheet No. 25D
Original Sheet No. 25B
Original Sheet No. 25C
Original Sheet No. 25D
4th Revised Sheet No. 30
Original Sheet No. 32B
Original Sheet No. 32C
Original Sheet No. 32D

Transwestern states that these tariff sheets are filed to revise Transwestern's tariff to include scheduling and balancing penalties. The tariff sheets also revise the provisions regarding unauthorized gas flow, waiver of penalty payments and reservation of other remedies provisions in such schedules.

Transwestern, herein, respectfully requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the above-listed tariff sheets to become effective on October 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 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 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. 89-21453 Filed 9-12-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3644-8]

Establishment of the Policy Review Board of the Gulf of Mexico Program

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of Establishment and Chartering of the Policy Review Board of the Gulf of Mexico Program.

SUMMARY: EPA Regions IV and VI have established the Gulf of Mexico Program, designed to develop and implement a comprehensive strategy to manage and protect the Gulf of Mexico. A Policy Review Board has been selected to guide and review activities of the Program. In accordance with the Federal Advisory Committee Act (FACA) administered by the General Services Administration (GSA), notice of establishment of the Policy Review Board is hereby given.

DATE: Effective on September 13, 1989.

ADDRESSES: Comments should be mailed to the Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000.

FOR FURTHER INFORMATION CONTACT: William Whitson (Assistant Director of Operations), (601) 688–3726, FTS 494–3726.

SUPPLEMENTARY INFORMATION: As required by Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of the establishment of a Policy Review Board for the Gulf of Mexico Program. This Board, consisting of twenty (20) senior level representatives from state and Federal agencies with regulatory or resource management authorities in the Gulf of Mexico and citizens representatives, will guide and review activities of the Gulf of Mexico Program. The Board approves program goals and objectives and establishes priorities and direction for the Gulf Program. The Board is chaired by the US EPA Region IV Regional Administrator, with the US EPA Region VI Regional Administrator serving as the vice-chair.

The primary purpose of the Gulf of Mexico Program is to provide a forum for defining and addressing environmental problems that face the Gulf. It is designed to better coordination the collaboration efforts of the many different organizations that carry out programs affecting the Gulf of Mexico, resulting in a strategy developed through the consensus process that will better manage and protect the resources of the Gulf.

We have determined that this is in the public interest and will assist the Agency in performing its duties described in the Clean Water Act. This effort compliments the Agency's Near Coastal Waters Initiative. Copies of the Policy Review Board's charter will be filed with appropriate committees of Congress and the Library of Congress.

September 7, 1989.

Joseph R. Franzmathes,

Assistant Regional Administrator for Policy and Management.

[FR Doc. 89–21498 Filed 9–12–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3645-9]

Science Advisory Board; Drinking Water Committee, Open Meeting

Under Public Law 92–463 notice is hereby given that a two-day meeting of the Drinking Water Committee of the Science Advisory Board will be held October 11 & 12, 1989, at the Governor's House Holiday Inn, 1615 Rhode Island Avenue, NW, Washington, DC 20036. The meeting will be held from 8:30 a.m. to 5:00 p.m. on October 11th and from 8:30 a.m. to 12:00 p.m. on October 12th.

The purpose of this meeting is to review recent developments in the thinking of the Office of Drinking Water concerning the regulation of disinfectants and disinfection by-products and to review the scientific research needed to support a proposed regulation in this area. Also the Committee will be briefed on the current and future activities of the Office of Drinking Water. The meeting will be open to the public. Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, Washington, DC 20460 or contact him on (202) 382–2552 by September 29, 1989. The Science Advisory Board expects that the public statements presented at this meeting will not be repetitive of previously submitted written statement. In general, each individual or group making an oral presentation will be limited to at total time of ten minutes.

Dated: September 5, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89–21496 Filed 9–12–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP-100068; FRL-3645-2]

Computer Sciences Corporation and CRC Systems Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connecton with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Computer Sciences Corporation (CSC) and its subcontractor, CRC Systems, Inc. have been awarded a contract to perform work for EPA's Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be made available to CSC and CRC Systems, Inc. in accordance with requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2), respectively. This transfer will enable CSC and CRC Systems, Inc. to fulfill the obligations of the contract and serves to notify affected persons.

DATE: CSC and CRC Systems, Inc. will be given access to this information no sooner than (September 18, 1989.

FOR FURTHER INFORMATION CONTACT: By mail:

Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–01–7176, Delivery Order No. 518, CSC and CRC Systems, Inc. will provide automated document processing support functions which include operating key-to-disc terminal stations, operating numerous DATA/100 remote job entry equipment, operating of the DEC2020 and have access to data bases containing information submitted to EPA under FIFRA and FFDCA. This access is incidental to their work, which involves loading and maintenance of all systems and applications software,

system performance tuning, data file backup services, diagnosis and remedy of system hardware and software failures, and implementation of EPA directed security protocols within the system environment. While CSC and CRC Systems, Inc. employees have complete access to all data within the systems environment, they are not in a position to know the actual significance to the data, nor do they use the data within its subject matter context.

The Office of Pesticide Programs has determined that access by CSC and CRC Systems, Inc. to information on all pesticide chemicals is necessary for the performance of the contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), the contract with CSC and CRC Systems, Inc. prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and handle it in accordance with the FIFRA Information Security Manual. In addition, CSC and CRC Systems, Inc. are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and it's subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to CSC and CRC Systems, Inc. by EPA for use in connection with this contract will be returned to EPA when CSC and CRC Systems, Inc. have completed their work.

Dated: August 31, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-21414 Filed 9-12-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 89-16]

Actions to Address Adverse Conditions Affecting United States Carriers That Do Not Exist for Foreign Carriers in the United States/Taiwan Trade; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 89-16 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 et seq., and that preparation of an environmental impact statement is not required.

Docket No. 89-16 initiates an investigation under the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a, of the shipping conditions in the United States/Taiwan trade. The investigation seeks to determine whether Taiwan laws, rules, regulations, policies or practices result in the existence of conditions which adversely affect the operations of United States carriers and which do not exist for Taiwan carriers in the United States.

This investigation focuses on certain "doing business" restrictions which appear to affect adversely the intermodal operations of United States carriers in Taiwan. These include restrictions of off-dock container terminal licensing, shipping agency licensing, and trucking licensing as well as restrictions affecting chassis registration and the domestic use of containers.

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

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

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-21433 Filed 9-12-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BancTenn Corp., et al., Applications To Engage de novo in Permissible Nonbanking Activities

The Companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 27, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *BancTenn Corp.*, Kingsport, Tennessee; to engage *de novo* through its subsidiary, BancTenn Service Corporation, Johnson City, Tennessee, in (1) servicing loans pursuant to § 225.25(b)(1); and (2) real estate and personal property appraisals pursuant to § 225.25(b)(13) of the Board's Regulation Y. These activities will be conducted in

Sullivan, Hawkins, Washington and Unicol Counties, Tennessee.

2. *Gold Coast Bancshares, Inc.*, Hypoluxo, Florida, and Gulfstream Financial Services, Inc., Fort Lauderdale, Florida; to engage *de novo* through their subsidiary, Gold Coast Financial Services, Inc., Hypoluxo, Florida, in mortgage banking and brokerage activities, including originating, brokering, and servicing of first and junior mortgages in the commercial and residential markets, purchase and sale of existing mortgages, and other activities incidental to a mortgage banking and mortgage brokerage business pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 41 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp., Inc.*, Louisville, Kentucky; to engage *de novo* through its subsidiary, Banker's Investment Group, Inc., Louisville, Kentucky, in underwriting and dealing in government obligations and money market instruments, pursuant to § 225.25(b)(16); providing investment advice incidental to transactions involving these securities pursuant to § 225.25(b)(4); and acting as broker in these and other government and money market securities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21485 Filed 9-12-89; 8:45 am]

BILLING CODE 6210-01-M

Changed in Bank Control Notices; Acquisitions of Share of Banks or Bank Holding Companies; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89-20278) published at page 35722 of the issue for Tuesday, August 29, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Ed Berrong is amended to read as follows:

1. *Ed Borrong*, Weatherford, Oklahoma; to acquire an additional 4.32 percent of the voting shares of First National Bancshares of Weatherford, Inc., Weatherfood, Oklahoma, for a total of 20.00 percent, and thereby indirectly acquire First National Bank and Trust Company, Weatherford, Oklahoma.

Comments on this application must be received by September 27, 1989.

Board of Governors of the Federal Reserve System September 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

The Royal Bank of Canada, Montreal, Quebec, Canada; Application to Conduct Private Placements of All Types of Securities as Agent

The Royal Bank of Canada, Montreal, Quebec, Canada ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage through RBC Dominion Securities Corporation ("Company") in the placement, as agent for issuers, of all types of obligations and securities, registered and nonregistered. Company is currently authorized to engage in providing various types of brokerage and investment and financial advisory services, as well as underwrite and deal in obligations that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act.

The Board previously has authorized a bank holding company subsidiary to privately place third-party commercial paper as agent subject to certain limitations. *Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 138 (1987) (*"Bankers Trust"*); *Bank of Montreal*, 74 Federal Reserve Bulletin 500 (1988). Applicant has proposed to engage in the placement activity subject to the limitations contained in *Bankers Trust* and *Bank of Montreal*, with certain exceptions. In particular, Applicant's proposal differs from that approved in *Bankers Trust* and *Bank of Montreal* in the following principal respects:

- The instruments proposed to be placed include all types of obligations and securities, registered and nonregistered;
- The eligible purchasers include individuals with a net worth of over $1 million and other persons who meet the standards of the SEC's Regulation D;
- Company's foreign affiliates and, under certain circumstances, its U.S. affiliates may engage in credit enhancement activities with respect to the securities placed;
- Officers of Company's foreign affiliates would be permitted to serve on Company's board of directors; and
- The limitations imposed in *Bankers Trust* on certain activities of affiliates of the subsidiary engaging in placement activities would apply only to Company's U.S. affiliates.

The Board has not previously determined that the proposed placement activities are permissible under section 4(c)(8) of the Act. Section 4(c)(8) provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined [by order or regulation— to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 Federal Register 806 (1984). Applicant maintains that the proposed placement activities are closely related to banking because banks are currently active participants in the private placement market and because such activities are operationally and functionally equivalent to many traditional commercial banking functions.

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "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." Applicant contends that permitting bank holding companies to engage in the proposed activities would result in increased competition and would raise no substantial risks of unsound banking, conflicts of interest, unfair competition, or similar problems.

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the

affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant contends that the proposed placement activities do not raise an issue under section 20, first, in that Applicant is not affiliated with a member bank, and second, in that the proposed activities do not differ in any material respect from those approved in the Board's *Bankers Trust* Order and *Securities Industry Ass'n* v. *Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 483 U.S. 1005 (1987).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than October 13, 1989. Any request for a hearing must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, September 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-21467 Filed 9-12-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in October

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of October 1989.

The Extramural Science Advisory Board, NIMH, will discuss the peer review process that evaluates all grant applications to the NIMH extramural research program. Attendance by the public will be limited to space available.

The initial review committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH

Date and Time: October 4-6: 9:00 a.m.

Place: The Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW., Washington, DC 20008

Status of Meeting: Open—October 5: 9:00-10:00 a.m. Closed—Otherwise

Contact: Monica Woodfork, Room 9C-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843

Purpose: The Subcommittee is charged with the initial review of applications for research in all disciplines pertaining to mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH

Date and Time: October 4-6: 9:00 a.m.

Place: The Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW., Washington, DC 20008

Status of Meeting: Open—October 5: 9:00-10:00 a.m. Closed—Otherwise

Contact: Kimberly Crown, Room 9C-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843

Purpose: The Subcommittee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA

Date and Time: October 11-13: 9:00 a.m.

Place: The Carlyle Suites, 1731 New Hampshire Avenue, N.W., Washington, DC 20009

Status of Meeting: Open—October 11: 9:00-10:00 a.m. Closed—Otherwise

Contact: Lenore Sawyer Radloff, Room 16C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6106

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for suport of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH

Date and Time: October 12-13: 9:00 a.m.

Place: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW., Washington, DC 20008

Status of Meeting: Open—October 12: 9:00-10:00 a.m. Closed—Otherwise

Contact: Phyllis Zusman, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3857

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Behavioral Neurobiology Subcommittee of the Neurosciences Research Review Committee, NIMH

Date and Time: October 12-14: 8:30 a.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—October 12: 8:30-9:30 a.m. Closed—Otherwise

Contact: Gerry Perlman, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3936

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral neurobiology, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cellular Neurobiology and Psychopharmacology

Subcommittee of the Neurosciences Research Review Committee, NIMH
Date and Time: October 12–14; 8:30 a.m.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852
Status of Meeting: Open—October 12: 8:30–9:30 a.m. Closed—Otherwise
Contact: Barbara Campbell, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 , (301) 443–3944
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institution of Mental Health for Support of research and research training activities relating to cellular neurobiology, and psychopharmacology with recommendations to the National Advisory Mental Health Council for final review.
Committee Name: Cognition, Emotion, and Personality Research Review Committee, NIMH
Date and Time: October 12–14: 9:00 a.m.
Place: Henley Park Hotel, 926 Massachusetts Avenue, NW., Washington, DC 20001
Status of Meeting: Open—October 12: 9:00–10:00 a.m. Closed—Otherwise
Contact: Shirley Maltz, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944
Purpose: The committee is charged with the initial reivew of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes with recommendations to the National Advisory Mental Health Council for final review.
Committee Name: Psychobiology and Behavior Research Review Committee, NIMH
Date and Time: October 16–17: 9:00 a.m.
Place: The State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037
Status of Meeting: Open—October 16: 9:00–10:00 a.m. Closed—Otherwise
Contact: Doris East, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activites relating to experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review.
Committee Name: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA
Date and Time: October 17–18: 8:30 a.m.
Place: Bethesda Holiday Inn, Pennsylvania Room, Bethesda, MD 20814
Status of Meeting: Open—October 17: 8:30 a.m. to 9:00 a.m. Closed—Otherwise
Contact: Rita Liu, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.
Committee Name: Drug Abuse Clinical and Rehavioral Research Review Committee NIDA
Date and Time: October 17–20: 9:00 a.m.
Place: Bethesda Holiday Inn, Georgia Room, 8120 Wisconsin Avenue, Bethesda, MD 20814
Status of Meeting: Open—October 17: 9:00–9:30 a.m. Closed—Otherwise
Contact: Daniel Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.
Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee NIDA
Date and Time: October 17–19: 8:30 a.m.
Place: Bethesda Holiday Inn, Gallery Room, 8120 Wisconsin Avenue, Bethesda, MD 20814
Status of Meeting: Open—October 17: 8:30–12:00 noon. Closed—Otherwise
Contact: Raquel Crider, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.
Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee NIAAA
Date and Time: October 18–20: 8:30 a.m.
Place: Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009
Status of Meeting: Open—October 18: 8:30–9:30 a.m. Closed—Otherwise
Contact: Thomas D. Sevy, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (301) 443–6106
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.
Committee Name: Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH
Date and Time: October 18–20: 9:00 a.m.
Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036
Status of Meeting: Open—October 18: 9:00–10:00 a.m. Closed—Otherwise
Contact: Maureen Eister, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.
Committee Name: Criminal and Violent Behavior Research Review Committee, NIMH
Date and Time: October 18–19: 9:15 a.m.
Place: Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009
Status of Meeting: Open—October 18: 9:15–10:15 a.m. Closed—Otherwise
Contact: Peg Lyons, Room 9C–18, Parklawn, Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the mental health aspects of antisocial, criminal, and individual violent behavior, including sexual assault and victimization, and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.
Committee Name: Research Scientist Development Review Committee, NIMH
Date and Time: October 18–20: 9:00 a.m.

Place: The Inn at Foggy Bottom, 824 New Hampshire Avenue, NW., Washington, DC 20037
Status of Meeting: Open—October 18: 9:00–10:00 a.m. Closed—Otherwise
Contact: Phyllis D. Artis, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full-time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH
Date and Time: October 19–21: 9:00 a.m.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852
Status of Meeting: Open—October 19: 9:00 a.m.–10:00 a.m. Closed—Otherwise
Contact: Christina De Mare, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities that focus on topics in the periods of the life cycle from infancy through adulthood where vulnerability to mental distress is known and assumed to be high and where research efforts can identify, prevent, reduce, or eliminate that distress or vulnerability with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA
Date and Time: October 23–25: 9: a.m.
Place: Holiday Inn—Capitol, 550 C Street, SW., Washington, DC 20024
Status of Meeting: Open—October 23: 9:00–9:30 a.m. Closed—Otherwise
Contact: Ronald Suddendorf, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Clinical Program Projects and Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH
Date and Time: October 23–24: 9:00 a.m.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852
Status of Meeting: Open—October 23: 9:00–10:00 a.m. Closed—Otherwise
Contact: Helen Craig, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of Mental Health Clinical Research Centers, clinical program projects, and other large-scale multi-disciplinary research projects, and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Extramural Science Advisory Board, NIMH
Date and Time: October 23–24: 8:30 a.m.
Place: National Institutes of Health, Building, 31, Conference Room 6, Bethesda, MD 20892
Status of Meeting: Open
Contact: Tony Pollitt, Room 17C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3175
Purpose: The Committee advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on the direction, scope, balance, and emphasis of the Institute's extramural science programs.

Committee Name: Small Business Research Review Committee, NIMH
Date and Time: October 23–24: 9:00 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815
Status of Meeting: Open—October 23: 9:00–11:00 a.m. Closed—Otherwise
Contact: Gloria Levin, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367
Purpose: The Committee is charged with the initial review of applications requesting support from the National Institute of Mental Health for small businesses involved in mental health research. Final review and recommendations are made from the National Advisory Mental Health Council.

Committee Name: Mental Health Behavioral Sciences Research Review Committee, NIMH
Date and Time: October 26–28: 9:00 a.m.
Place: The River Inn, 924 25th Street NW., Washington, DC 20037
Status of Meeting: Open—October 26: 9:00–10:00 a.m. Closed—Otherwise
Contact: Sheila O'Malley, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH
Date and Time: October 26–27: 9:00 a.m.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852
Status of Meeting: Open—October 26: 9:00–10:00 a.m. Closed—Otherwise
Contact: Helen Craig, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychopathology and Clinical Biology Research Review Committee NIMH
Date and Time: October 31–November 1: 9:00 a.m.
Place: Days Inn Congressional Park, 1775 Rockville Pike, Rockville, MD 20852
Status of Meeting: Open—October 31: 9:00–10:00 a.m. Closed—Otherwise
Contact: Barbara Silver, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1330
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and

clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C–20, 443–4375; Ms. Camilla Holland, NIDA Committee Management Officer Room 10–42, (301) 443–2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, (301) 443–4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: September 7, 1989.

Peggy W. Cockrill,

Committee Management Officer Alcohol, Drug Abuve, and Mental Health Administration.

[FR Doc. 89–21431 Filed 9–12–89; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 89M–0352]

CooperVision, Inc.; Premarket Approval of CooperVision SURGEON PLUS+® Nylon Monofilament Suture U.S.P.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CooperVision, Inc., Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of the CooperVision SURGEON PLUS+® Nylon Monofilament Suture U.S.P. After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 2, 1989, of the approval of the application.

DATES: Petitions for administration review by October 13, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Palmer, Center For Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1090.

SUPPLEMENTARY INFORMATION: On September 19, 1988, CooperVision, Inc., Irvine, CA 92713, submitted to CDRH an application for premarket approval of CooperVision SURGEON PLUS+® Nylon Monofilament Suture U.S.P. The device is indicated for use in soft tissue approximation in ophthalmic surgery, but not in general surgery, cardiovascular surgery, microsurgery, and neural tissue. The device is available in sterile packets in U.S.P. sizes 9–0 through 11–0.

In the **Federal Register** of September 30, 1977, FDA published a final regulation listing the color additive logwood extract (21 CFR 73.1410) for use in coloring nylon surgical sutures. The use of logwood extract in coloring CooperVision SURGEON PLUS+® Nylon Monofilament Suture U.S.P. conforms to the color additive listing requirements specified in the regulation.

On March 10, 1989, the General and Plastic Surgery Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 2, 1989, CDRH approved the application by a letter to the applicant fom the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kenneth A. Palmer (HFZ–410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 13, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 6, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–21489 Filed 9–12–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2051]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management

Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Housing Counseling Program and Recordkeeping Requirements (Non-Funded)

Office: Housing

Description of the need for the information and its proposed use: Section 106 of the Housing and Urban Development (HUD) Act authorizes HUD to approve organizations with knowledge and experience in counseling to provide housing counseling services to HUD clientele. Section 106 also authorizes HUD to make grants to these organizations for the delivery of services. The information will be used to meet the requirements of the program, to obtain data to prepare and support the program, and to obtain recommendations from grantees for improving the program

Form Number: HUD–9900, 9902, 9903, and 9909

Respondents: Non-Profit Institutions

Frequency of Submission: Recordkeeping and Semi-Annually

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–9900	25		1		54		1,350
HUD–9902	475		2		1⅛		1,108
HUD–9903	4,166		1		⅛		347
HUD–9909	1,000		1		¼		250
Recordkeeping	5,666		1		1		5,666

Total Estimated Burden Hours: 8,721

Status: Reinstatement

Contact: William Feingold, HUD, (202) 755–6664; John Allison, OMB, (202) 395–6880.

Dated: September 7, 1989.

[FR Doc. 89–21511 Filed 9–12–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–2050]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: September 6, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Housing Counseling Program and Recordkeeping Requirements (Funded)

Office: Housing

Description of the need for the information and its proposed use: Section 106 of the Housing and Urban Development (HUD) Act authorizes HUD to approve organizations with knowledge and experience in counseling to provide housing counseling services to HUD clientele. Section 106 also authorizes HUD to make grants to these organizations for the delivery of services. The information will be used to meet the requirements of the programs, to obtain data to prepare and support the program, and to obtain

recommendations from grantees for improving the program
Form Number: HUD–6921
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Submission: Recordkeeping, Quarterly, and Other
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Quarterly Performance Report	200		4		.5		400
Final Report	200		1		3		600
Recordkeeping	200		1		35		7,000

Total Estimated Burden Hours: 8,000
Status: Reinstatement
Contact: William Feingold, HUD, (202) 755–6664; John Allison, OMB, (202) 395–6880
Date: September 6, 1989.
[FR Doc. 89–21512 Filed 9–12–89; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Records for Oneida Indian-Owned Lands in the State of Wisconsin

August 28, 1989.

ACTION: Notice; Transfer of Custody.

SUMMARY: This notice is published in accordance with 25 CFR part 150 and in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs under 209 DM 8.1. As of October 1, 1989, the official custody of all Oneida land records and title documents pertaining to Indian-owned trust or restricted lands under the jurisdiction of the Minneapolis Area Office, Minneapolis, Minnesota, and the Great Lakes Agency, Ashland, Wisconsin, that are located within the boundaries of the Oneida Indian Reservation, is transferred from the Central Office, Washington, DC, to the Aberdeen Land Titles and Records Office, Bureau of Indian Affairs, 115 4th Avenue, S.E., Aberdeen, South Dakota 57401. The Aberdeen Land Titles and Records Office is thereafter the official office of record for the recording and maintenance of the records.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Quentin M. Jones, Land Records Officer, Division of Real Estate Services, Bureau of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245.

Walter R. Mills
Acting Assistant Secretary—Indian Affairs.
[FR Doc. 89–21444 Filed 9–12–89; 8:45 am]
BILLING CODE 4310–02–M

Bureau of Land Management

[AA–320–09–4212–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0023), Washington, DC 20503, telephone 202–395–7340.

Title: Indian Allotments, 43 CFR 2530
OMB approval number: 1004–0023
Abstract: Respondents supply identifying information to be used by the agency to determine eligibility and identify information needed to assist in the conveyance of Title.
Bureau form number: 2530–1
Frequency: Once
Descripton of respondents: Individuals applying for conveyance of Public Land under the General Allotment Act.
Estimated completion time: ½ hour
Annual responses: 50
Annual burden hours: 25
Bureau clearance officer: Rick Iovaine 202–653–8853

Dated: August 21, 1989.
Billy R. Templeton,
Acting Assistant Director, for Land and Renewable Resources.

[FR Doc. 89–21507 Filed 9–12–89; 8:45 am]
BILLING CODE 4310–84–M

[UT–048–9–4320–10]

Environmental Assessment Proposed Action Within the Paria Canyon-Vermilion Cliffs Wilderness Area, UT

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of availability of a Draft Environmental Assessment for a proposed action within the Paria Canyon-Vermilion Cliffs Wilderness Area.

ADDRESS: To obtain a copy of the Environmental Assessment for the proposed maintenance contact Martha Hahn, Area Manager, Kanab Resource Area, 318 North First East, Kanab, Utah 84741 or telephone (801) 644–2672.

SUMMARY: The Bureau of Land Management, Cedar City District, is proposing to authorize the maintenance of existing range improvements within its area of livestock grazing responsibility in the Paria Canyon-Vermilion Cliffs Wilderness Area. This maintenance will authorize the use of vehicle access.

COMMENTS: Comments will be accepted October 13, 1989.

Dated: September 5, 1989.
Ronald A. Montagna,
Acting District Manager.
[FR Doc. 89–21480 Filed 9–12–89; 8:45 am]
BILLING CODE 4310–DQ–M

[UT–048–9–4212–10]

Environmental Assessment Proposed Action Within Wilderness Study Areas; UT

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of availability of a draft environmental assessment for a proposed action within the Wahweap Wilderness Study Area.

ADDRESS: To obtain a copy of the environmental assessment for a proposed filming project, contact Martha Hahan, Area Manager, Kanab Resource

Area, 318 North First East, Kanab, Utah 84741, or telephone (801) 644–2672.

SUMMARY: The Bureau of Land Management, Cedar City District, is proposing to authorize the film company Highway Production, Inc., to film within the Wilderness Study Area.

COMMENTS: Comments will be accepted October 13, 1989.

Dated: September 5, 1989.

Ron Montagna,

Acting District Manager.

[FR Doc. 89–21481 Filed 9–12–89; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–010–09–3110–CAPL; Casefile # CACA 25767]

Realty Action Exchange of Public and Private Lands in Kern and San Luis Obispo Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—CACA 25767.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 USC 1716):

Mt. Diablo Meridian, California
T.31S., R.32E.
Sec. 32 E½NE¼, NE¼SE¼ (surface and mineral estate)
Sec. 34 SW¼NE¼, SE¼NW¼, SW¼SW¼, SE¼SE¼ (minerals only)
T.32S., R.32E.
Sec. 2 W½of lot 1 of NW¼, W½ of Lot 2 of NW¼, SW¼SE¼ (minerals only)
Sec. 4 W½ of Lot 2 of NW¼ (minerals only)
Sec. 8 E½Nw¼, S½SW¼ (minerals only)
Sec. 10 N½, E½SW¼, SE¼ (minerals only)
Containing 120 acres of public surface plus mineral estate, and 1,040.95 acres of public mineral estate only.

In exchange for these lands, the United States will acquire an equal value of lands within the Carrizo Plain Natural Area from The Nature Conservancy, a private, nonprofit organization.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire a portion of the non-federal lands within the Carrizo Plain Natural Area. This Natural Area would promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna.

The ultimate goal of the Bureau of Land Management is to acquire approximately 155,000 acres within the Natural Area. A secondary purpose of the exchange is to consolidate the Bureau lands and reduce the number of scattered, isolated Bureau parcels that are difficult for the Bureau to manage and that may develop use conflicts with adjacent or surface owners. The public interest will be well served by completing the exchange.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and mining laws. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first.

After the exchange is completed, The Nature Conservancy plans to offer the former BLM land for sale to the surrounding landowner.

The exchange will be on an equal value basis. Acreage of the private land will be adjusted to approximate equal values. Full equalization of value will be achieved by future exchanges under a pooling agreement with The Nature Conservancy.

Land transferred from the United States will retain the following reservations

1. A right-of-way for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 USC 945). This reservation will apply only to the aforementioned public lands in sec. 32, T.31S., R.32E., MDM.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861–4236.

DATE: On or before October 30, 1989, interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: September 1, 1989.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 89–21482 Filed 9–12–89; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service and OMB, Paperwork Reduction Project (1018–0067), Washington, DC 20503, telephone 202–395–7340.

Title: Migratory Bird Hunting: Nontoxic Shot Approval Procedures

OMB Approval No: 1018–0067

Abstract: Regulations contained in 50 CFR 20.134(a) require that the Service Director determine the nontoxicity of candidate shot material that could be used for migratory bird hunting. Applicants proposing candidate shot, as alternatives to existing types, must gain a determination of status of nontoxicity through confirmatory tests. The process of application and testing is designed to eliminate obviously unacceptable candidate shot types, unnecessary testing and/or reviews. Failure to require this procedure would result in no further research and development of alternative nontoxic shot types, as there would be no mechanism for obtaining approval for its use.

Service Form number: N/A

Frequency: On occasion

Description of Respondents: Individuals and households, farms, small businesses or organizations, and businesses or other for profit.

Estimated Completion Time: The reporting burden is estimated to be 8 hours per response. The recordkeeping burden is estimated to be 500 hours, for a total burden of 508 hours.

Annual Responses: 1

Annual Burden Hours: 508

Service Information Collection Clearance Officer: James E. Pinkerton, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240; telephone 358–1943.

David Olsen,

Dated: August 21, 1989.

Assistant Director—Refuges and Wildlife.

[FR Doc. 89–21443 Filed 9–12–89; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5670, Block 33, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on September 5, 1989. Comments must be received September 28, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 5, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–21484 Filed 9–12–89; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–298 (Final)]

Fresh, Chilled, or Frozen Pork From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act), that an industry in the United States is threatened with material injury [3] by reason of imports from Canada of fresh, chilled, or frozen pork, provided for in subheadings 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Canda.

Background

The Commission instituted this investigation effective May 8, 1989, following a preliminary determination by the Department of Commerce that imports of fresh, chilled or frozen pork from Canada were being subsidized within the meaning of section 701 of the act (19 U.S.C. 1671). 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 May 25, 1989 (54 FR 22634). The hearing was held in Washington, DC on August 1, 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 September 5, 1989. The views of the Commission are contained in USITC Publication 2218 (September 1989) entitled "Fresh, Chilled, or Frozen Pork from Canada: Determination of the Commission in Investigation No. 701–TA–298 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: September 6, 1989.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–21508 Filed 9–12–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation Nos. 701–TA–300 (Preliminary) and 731–TA–438 (Preliminary)]

Limousines From Canada

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of limousines,[3] provided for in subheadings 8703.23.00, 8703.24.00, and 9802.00.50 of the Harmonized Tariff Schedule of the United States (previously under items 692.10 and 806.20 of the Tariff Schedules of the United States), that are alleged to be subsidized by the Government of

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Chairman Brunsdale and Vice Chairman Cass dissenting. Commissioner Lodwick did not participate.

[3] Commissioners Eckes, Rohr, and Newquist further determine that, pursuant to section 705(b)(4)(B), they would not have found material injury by reason of the imports subject to the investigation but for the suspension of liquidation of the entries of the subject merchandise.

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Commissioner Rohr did not participate.

[3] The products covered by these investigations are limousines, which are defined as extended wheelbase and expanded seating capacity motor vehicles principally designed for the transport of persons, of a cylinder capacity exceeding 1,500 cubic centimeters, and having spark-ignition internal combustion reciprocating piston engines of six or more cylinders. The vehicles are built on Lincoln Town Car, Mercury Grand Marquis, Cadillac Brougham, or any other six or eight cyclinder gasoline engine powered chassis.

Canada and sold in the United States at less than fair value (LTFV).

Background

On July 24, 1989, petitions were filed with the Commission and the Department of Commerce by Southhampton Coachworks, Ltd., Farmingdale, NY, on behalf of U.S. manufacturers of limousines, alleging that an industry in the United States is materially injured by reason of subsidized imports and LTFV imports of limousines from Canada. Accordingly, effective July 24, 1989, the Commission instituted preliminary countervailing duty and antidumping investigations Nos. 701–TA–300 (Preliminary) and 731–TA–438 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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 August 2, 1989 (54 FR 31897). The conference was held in Washington, DC on August 15, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 7, 1989. The views of the Commission are contained in USITC Publication 2220 (September 1989) entitled "Limousines from Canada: Determinations of the Commission in Investigations Nos. 701–TA–300 (Preliminary) and 731–TA–438 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: September 8, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–21504 Filed 9–12–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–300]

Certain Doxorubicin and Preparations Containing Same; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, George C. Summerfield, Esq. and Gary M. Hnath, Esq., of the Office of Unfair Import Investigations have been designated as the Commission investigative attorneys in the above-cited investigation instead of George C. Summerfield, Esq.

The Secretary is requested to publish this notice in the Federal Register.

Dated: September 8, 1989.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 89–21503 Filed 9–12–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–429 (Final)]

Mechanical Transfer Presses From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–429 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of mechanical transfer presses,[1] provided for in subheadings 8462.99.00 and 8466.94.50 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce will make its final LTFV determination on or before December 26, 1989 and the Commission will make its final injury determination by February 8, 1990 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended by 53 FR 33041, August 29, 1988, and 54 FR 5220, February 2, 1989), and part 201, subparts A through E (19 CFR part 201 as amended by 54 FR 13672, April 5, 1989).

[1] For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–252–1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of mechanical transfer presses from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on January 12, 1989, by Verson Division of Allied Products Corporation, Chicago, IL, the United Auto Workers of America, and the United Steelworkers of America (AFL–CIO–CLC). In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 9905, March 8, 1989).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as

identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on December 15, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 4, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 21, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 27, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 27, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 10, 1990. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 10, 1990.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than January 16, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 7, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-21505 Filed 9-12-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31387 (Sub-No. 1)]

Canadian National Railway Co.—Lease From Grand Trunk Western Railroad Co.

Decided: September 5, 1989.

AGENCY: Interstate Commerce Commission.

ACTION: Extension of period for filing comments.

SUMMARY: The date for filing comments is extended for one week, with corresponding extensions in the succeeding filing dates.

DATES: Written comments must be filed by September 25, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by October 10, 1989. The Commission will prepare a service list shortly thereafter. Comments must be served within 10 days of the issuance of the service list. Applicant's reply is due by October 31, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: By application filed July 20, 1989, Canadian National Railway Company (CN) and Grand Trunk Western Railroad Company (GTW), collectively referred to as applicants, seek Commission approval under 49 U.S.C. 11343, *et seq.*, for CN to lease GTW's Railport intermodal facility (Railport) in Chicago, IL. In a decision served August 17, 1989 (54 FR 34260, August 18, 1989),[1] the Commission determined that the proposal is a minor transaction within the meaning of 49 CFR 1180.2(c), and since the application was filed in conformity with the consolidation regulations at 49 CFR Part 1180, it formally accepted the application for consideration. The Commission requested comments from interested persons by September 18, 1989, and from the Secretary of Transportation (Secretary) and the Attorney General of the United States (Attorney General) by October 2, 1989. Applicant's reply comments were due by October 23, 1989.

On August 29, 1989, the Railway Labor Executives' Association (RLEA) requested a 30-day extension of the procedural schedule, computed from the date of this decision, because it was not

[1] A corrected version was served August 22, 1989, (54 FR 35258, August 24, 1989).

served with a copy of the August 17 decision accepting the application for consideration. It says that it did not receive actual notice until August 29. Applicants state that they do not object to the extension request so long as the Commission does not modify the date upon which it is considered to have accepted the application.

Previously, RLEA had participated as a party in Finance Docket No. 31387, *Canadian National Ry. Co.—Partial Revoc. of Class Exempt.—Lease from Grand Trunk West. R. Co.* (not printed) served January 27, 1989. In that proceeding, the Commission granted a partial revocation of the class exemption for transactions within a corporate family under 49 CFR 1180.2(d)(3) to the extent that it related to the rail properties involved in this anticipated application proceeding. Mistakenly, applicants then filed this application under that same exemption proceeding docket number, Finance Docket No. 31387, and served a copy of the application on RLEA since RLEA had been a party to the exemption proceeding. However, the exemption revocation proceeding and the proposed lease are two separate proceedings. Thus, the Commission redocketed the application proceeding as Sub-No. 1. Accordingly, RLEA was not served directly.

When an application is filed under 49 U.S.C. 11343, *et seq.*, and is determined to involve a minor transaction, the decision is published in the **Federal Register**, but is not made on private parties. Publication in the **Federal Register** is deemed adequate notice for interested parties to determine their interest in the proceeding and to file appropriate comments. *See Friends of Sierra Railroad v. ICC*, No. 87-7407, slip op. at 8501 (9th Cir. July 31, 1989). It is unfortunate that the misfiled application and subsequent redocketing procedure created confusion on the part of RLEA, but the Commission's adding the sub-number to distinguish the lease transaction from the previous exemption revocation proceeding does not affect the adequacy of the **Federal Register** notice.

RLEA has not shown why it needs a new 30-day period to file comments. However, since the applicants do not object to an extension of the comment period, I will grant a one week extension. The comment period for the Secretary and Attorney General and the period for applicants to file a reply will also be extended correspondingly.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 89-21389 Filed 9-12-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting; Advisory Policy Board (APB) Uniform Crime Reporting (UCR)

The UCR APB will meet on October 13, 1989, from 1:00 p.m. until close of business at the Galt House, Fourth Street and River Road, Louisville, Kentucky 40202.

The major topics of discussion will be the current implementation status of the National Incident-Based Reporting System to include Federal participation, Federal representation on the APB, and the current status of Hate/Bias crime legislation in Congress.

The meeting will be open to the public with approximately 25 seats available on a first-come, first-served basis. Any member of the public may file a written statement with the APB before or after the meeting. Anyone wishing to address a session of the meeting should notify the Committee Management Liaison Officer, Mr. J. Harper Wilson, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain their name, corporate or Government designation, and consumer affiliation, along with the capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairperson of the Board.

Inquiries may be addressed to Mr. J. Harper Wilson, Committee Management Liaison Officer, Records Management Division, Federal Bureau of Invetigation, Washington, DC 20535, telephone number (202) 324-2614.

Dated: August 24, 1989.

William S. Sessions,

Director.

[FR Doc. 89-21509 Filed 9-12-89; 8:45 am]

BILLING CODE 4410-22-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-21,406 Dallas, TX; TA-W-21,406A Magnolia, AR; TA-W-21,406B Irving, TX]

Core Laboratories, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 1988 applicable to all workers of Core Laboratories, Inc., Dallas, Texas and Magnolia Arkansas.

The Department is amending the certification to show the correct locations of the worker groups. In late 1987 the Dallas, Texas operation was moved to Irving, Texas. Worker separations have occurred at both Dallas and Irving, Texas and in Magnolia, Arkansas. The notice, therefore, is amended by including workers in Irving, Texas under this petition.

The amended notice applicable to TA-W-21,406 is hereby issued as follows:

"All workers of Core Laboratories, Inc., Dallas, Texas; Irving, Texas and Magnolia, Arkansas who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of August 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-21460 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,078 Dallas, TX; TA-W-23,078A Giddings, TX]

HECI Exploration Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 3, 1989 applicable to all workers of HECI Exploration Company, Dallas, Texas.

The Department is amending the certification to show the correct locations of the worker groups. HECI

Exploration has its headquarters in Dallas, Texas and operates in Giddings, Texas where worker separations occurred. The notice, therefore, is amended by including workers in the field office in Giddings, Texas.

The amended notice applicable to TA-W-23,078 is hereby issued as follows:

All workers of HECI Exploration Company, Dallas, Texas, and Giddings, Texas who became totally or partially separated from employment on or after May 31, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of August 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-21461 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,369A Mount Pleasant, MI]

Schlumberger Well Services; Cancellation of Certification Regarding Eligibility to Apply for Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 2, 1989 applicable to all workers of Schlumberger Well Services, Traverse City, Michigan and Mount Pleasant, Michigan.

The Department, on its own motion, has reopened the investigation and is cancelling the certification for the Mount Pleasant, Michigan location of Schlumberger Well Services since the workers at Mount Pleasant are already certified eligible for adjustment assistance under petition TA-W-21,755. However, that part of the certification concerning workers of Schlumberger Well Services at Traverse City, Michigan, TA-W-22,369, remains in effect.

Signed at Washington, DC, this 31st day of August 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-21462 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-10-M]

Lone Star Industries, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Lone Star Industries, Inc., 162 Old Mill Road, West Nyack, New York 10994, has filed a petition to modify the application of 30 CFR 57.15020 (life jackets and belts) to its Clinton Point Quarry (I.D. No. 30-00082) located in Dutchess County, New York. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that life jackets or belts be worn where there is danger from falling into water.

2. In the dock loading operation, employees (trimmers) are required to work on top of the load as it is being loaded. There is no danger of falling into the water.

3. During warm weather, the wearing of a life jacket causes problems because of heat stress.

4. As an alternate method, petitioner proposes that employees not be required to wear life jackets during the "trimming" phase of barge loading from May 15 through October 15.

5. For these reasons, petitioner requests a modification of the standard.

Request for comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-21463 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-128-C]

McElroy Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examination for hazardous conditions) to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to numerous roof falls, certain areas of the return aircourses cannot be safely traveled. Restoration of these areas would require an exorbitant amount of time and work would be performed under extremely hazardous conditions.

3. As an alternate method, petitioner proposes to establish checkpoints at specific locations where the air returning to these areas would be monitored.

4. In support of this request, petitioner states that—

(a) All monitoring stations and the approaches to such stations would, at all times, be maintained in a safe condition. Additionally, the fan operation is continuously monitored at the 24-hour manned Communication Center. Also, the water gauge is continuously monitored at the Communication Center, so that any sudden drop or increase would set off an alarm. The fan is inspected and the water gauge signal is tested on a daily basis, and the results recorded;

(b) Tests for methane and the quantity of air would be determined weekly by a certified person at each station; and

(c) The person making such examinations and tests would place his/her initials and the date and time at each station. A record of these examinations, tests and actions taken would be recorded in a book kept on the surface and made available for inspection by interested persons.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administation, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition

are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-21464 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-132-C]

Preece Processing, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Preece Processing, Inc., P.O. Box 449, Turkey Creek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15-16441) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's 74 S & S Scoop, Serial No. 74BCA-125.

2. The mine ranges in height from 30 to 50 inches.

3. The use of a canopy on the mine's 74 S & S Scoop, Serial No. 74BCA-125 would result in a diminution of safety to the miners affected because the canopy would:

(a) Rub the top of the mine, pulling out roof bolts and loose rock;

(b) Cause the operator to lean outside of the scoop to operate it; and

(c) Limit the operator's visibility.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-21465 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-134-C)]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pryo Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation, minimum requirements) to its Pyro No. 11 Mine (I.D. No. 15-10339), its Pyro No. 9 Wheatcroft Mine (I.D. No. 15-13920), and its Placo Mine (I.D. No. 15-14492) all located in Webster County, Kentucky, and its Pyro No. 9 Slope, William Station Mine (I.D. No. 15-13881) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system would be installed in all belt entries. The low-level CO system would be capable of giving warning of a fire for four hours should the power fail; both visual and audible alarms would be activated when the CO level is 225 ppm above the established ambient level or in the event of any system failure. All persons would be evacuated when the level reaches 25 ppm. When the alarm is activated because of system failure, immediate repair work would begin. The CO monitoring system would initiate the fire alarm signals at an attended surface location where there is two-way communication. This responsible person would notify all affected personnel when an alarm occurs. The CO system would be capable of identifying any activated sensor and for detecting any system failures and providing alarms if failures occur.

3. The CO monitoring system would be inspected weekly. The CO sensors would also be calibrated monthly, and since each calibration would activate the alarm system, the entire system would also be functionally tested monthly.

4. If at any time the CO monitoring system or any portion of the system would be deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor would continue to operate provided the affected portion of the belt conveyor entry would be patrolled twice each shift and monitored for CO by a qualified person using a hand-held CO detector.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-21466 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-119-C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Pierrepont Mine (I.D. No. 44-06206) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On August 2, 1986, petitioner was granted a modification of 30 CFR 75.1105 to use air currents which are used to ventilate dry-type transformers, permanent pumps containing no flammable liquid hydraulic oil (except for capacitors in transformers which may contain up to a total of 3 gallons of flammable liquid) and rectifiers to ventilate active working places and to install an early warning fire detection system and to monitor the air with a carbon monoxide detection system in all belt entries utilized as intake aircourses [Docket No. M-85-59-C].

2. This petition concerns paragraph 1(d) of MSHA's Decision and Order which requires that the velocity of air in

the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry cannot exceed 300 feet per minute.

3. Paragraph 1(d) should be modified to require that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that limiting velocities to 300 feet per minute seriously impairs the ability to maintain the minimum velocity of 50 feet per minute required for a definite and distinct air movement in the designated direction in section belt entries. Furthermore restricting the air current in the belt conveyor entries to 300 feet per minute would reduce the volume of air coursed to mining sections necessary to dilute, render harmless and to carry away flamable, explosive, noxious, and harmful gases and dust and to ensure adequate ventilation for diesel equipment operated in aircourses common to the belt entries and the working section.

5. For these reasons, petitioner requests an amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.1105.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-21467 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-118-C]

Westmoreland Coal Co; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Pierrepont Mine (I.D. No. 44-06206) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On August 7, 1986, petitioner was granted a modification of 75.1103-4(a) to use a fire sensor and warning device system capable of identification of fire by activated sensors rather than identification of fire within each belt flight and to install an early warning fire detection system and to monitor the air with a carbon monoxide system in all belt entries utilized as intake aircourses [Docket No. M-85-58-C].

2. This petition concerns paragraph 1(d) of MSHA's Decision and Order which requires that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry cannot exceed 300 feet per minute.

3. Paragraph 1(d) should be modified to require that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that limiting velocities to 300 feet per minute seriously impairs the ability to maintain the minimum velocity of 50 feet per minute required for a definite and distinct air movement in the designated direction in section belt entries. Furthermore, restricting the air current in the belt conveyor entries to 300 feet per minute would reduce the volume of air coursed to mining sections necessary to dilute, render harmless and to carry away flammable, explosive, noxious, and harmful gases and dust and to ensure adequate ventilation for diesel equipment operated in aircourses common to the belt entries and the working section.

5. For these reasons, petitioner requests an amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.1103-4(a).

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-21468 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-117-C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Pierrepont Mine (I.D. No. 44-06206) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On August 2, 1986, petitioner was granted a modification of 30 CFR 75.326 to use intake air which is coursed through belt haulage and or track entries to ventilate active working places and to install an early warning fire detection system and to monitor the air with a carbon monoxide detection system [Docket No. M-85-57-C].

2. This petition concerns paragraph 1(d) of MSHA's Decision and Order which requires that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction. The velocity of the air current in the belt conveyor entry cannot exceed 300 feet per minute.

3. Paragraph 1(d) should be modified to require that the velocity of air in the belt conveyor entry be 50 feet a minute or greater and have a definite and distinct movement in the designated direction.

4. In support of this request, petitioner states that limiting velocities to 300 feet per minute seriously impairs the ability to maintain the minimum velocity of 50 feet per minute required for a definite and distinct air movement in the designated direction in section belt entries. Furthermore, restricting the air current in the belt conveyor entries to 300 feet per minute would reduce the volume of air coursed to mining sections necessary to dilute, render harmless and to carry away flammable, explosive, noxious, and harmful gases and dust and to ensure adequate ventilation for diesel equipment operated in aircourses

common to the belt entries and the working section.

5. For these reasons, petitioner requests an amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.326.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 13, 1989. Copies of the petition are available for inspection at that address.

Dated: September 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-21469 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[Docket No. NRTL-1-89]

ETL Testing Laboratories, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of recognition as a nationally, recognized testing laboratory.

SUMMARY: This notice announces the Agency's final decision on the ETL Testing Laboratories, Inc., application for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that ETL Testing Laboratories, Inc., which made application for recognition pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or materials listed below.

The addresses of the laboratories covered by this recognition are:

ETL Testing Laboratories, Inc., Cortland Safety Division, Industrial Park, Cortland, New York 13045

ETL Testing Laboratories, Inc., 5855-P Oakbrook Parkway, Norcross, Georgia 30093

ETL Testing Laboratories, Inc., West Coast Division, 660 Forbes Boulevard, South San Francisco, California 94080

Background

ETL Testing Laboratories, Inc., (ETL), was founded in New York City as the Lamp Testing Bureau in 1896 by the Edison Illuminating Companies. After 46 years of performing electrical, chemical and photometric tests, ETL was divested by the illuminating companies and purchased by its employees in 1942. By that time the name of the company had been changed to Electrical Testing Laboratories. In 1977, the Electrical Testing Laboratories, Inc., moved its operation to Cortland, New York. Soon after moving to Cortland, the name of the company was changed to ETL Testing Laboratories, Inc. In 1979, the decision was made to implement a product safety labeling, listing, and follow-up program similar to that of Underwriters' Laboratories, Inc. In 1984, ETL established a West Coast Division in South San Francisco, California, specializing in product safety testing, to serve clients west of the Rocky Mountains. In 1985, a Southeast Division located in Norcross, Georgia was established. This Division also specializes in product safety testing. Also in 1985, ETL was purchased by its management, along with a New York based investment firm. In October 1988, ETL Testing Laboratories, Inc., was purchased by Inchcape Inspection and Testing Services USA, Inc.

ETL Testing Laboratories, Inc., applied to OSHA for recognition as a Nationally Recognized Testing Laboratory in May 1988. The application was subsequently revised and additional data provided as requested. On-site evaluations were conducted (Exs. 2B(1), 2C(1), and 2D(1)), and the results were discussed with the applicant who responded with appropriate corrective actions and clarifications to recommendations made as a result of the survey (Exs. 2B(2), 2C(2), and 2D(2)). Final on-site review reports, consisting of the on-site evaluations of ETL's testing facilities and administrative and technical practices and the corrective actions taken by ETL in response to these evaluations (Exs. 2B, 2C, and 2D) and the OSHA staff recommendation, were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of ETL's application together with a positive preliminary finding was published in the **Federal Register** on February 28, 1989 (54 FR 8411-8414). Interested parties were invited to submit comments.

There were seventeen responses to the **Federal Register** notice of the ETL application and preliminary finding (Docket No. NRTL-1-89). Exhibits 3-1 through 3-6 and 3-8 through 3-17 attested to the credibility of the applicant, agreed with the positive preliminary finding, and recommended recognition as a nationally recognized testing laboratory. The other comment, Exhibits 3-7, will be discussed more fully below.

The Occupational Safety and Health Administration has evaluated the record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the testing laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

Based upon the on-site review reports, the products and standards in question, ETL's three laboratories have adequate floor space for testing and evaluation and numbers of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks.

The Cortland Safety Division is located in an ETL owned commercial building complex on a 45 acre site. The main building contains more than 160,000 square feet of floor space of which approximately 18,000 square feet is allocated to product testing and evaluation.

Ambient environmental conditions in the building are monitored and controlled by a central heating, ventilating, and air conditioning system while the temperature and humidity are more closely controlled in rooms used for calibrating test instruments and for specific product testing. Visitor entry to the facility is carefully controlled and the premises are protected by security personnel at all times. The building has a security alarm system and fire sprinkler systems.

The Cortland Safety Division consists of 72 professional or technical employees, of which 67 are located at

the Cortland, New York facility, as follows:
1—Safety Division Manager
4—Department Managers
1—Staff Engineer
2—Senior Engineers
9—Project Engineers
36—Field Engineers
3—Team Leaders
5—Technicians
5—Report Writers
1—Staff Assistant

The Norcross (Atlanta) laboratory, which is a department of the Cortland Safety Division, leases 5,000 square feet of floor space in a commercial/industrial park; some 1,800 square feet in the facility is devoted to product testing and evaluation.

Ambient environmental conditions within the laboratory are monitored and controlled by a central heating, ventilating, and air conditioning system. Entrance to the laboratory is monitored during working hours. The facility has a manual key-activated security alarm system and a water sprinkler system for fire protection.

The Norcross laboratory consists of the following professional or technical personnel:
1—Department Manager
3—Project Engineers
1—Report Writer

The East Coast Divison laboratory located in South San Francisco leases a commercial building consisting of more than 10,500 square feet of floor space. Of this space, some 7,000 square feet is allocated to product testing and evaluation.

Ambient environmental conditions in the office areas are monitored and controlled by a central heating, ventilating, and air conditioning system. Other individual rooms in the laboratory are temperature controlled for specific product testing. The building has a security alarm and motion detection systems. The laboratory has a water sprinkler system for fire protection.

The South San Francisco laboratory consists of the following professional or technical personnel:
1—Division Manager
4—Project Engineers
2—Technicians
1—Report Writer
2—Marketing

ETL has submitted copies of the job responsibilities and qualifications for each of the technical positions listed above and the employees, in OSHA's opinion, appear to be qualified by training or experience for performing testing in the areas for which ETL seeks recognition.

ETL has more than 1,470 items of test equipment it uses to perform the testing required by the various test standards. This equipment is located as follows:

The Cortland, New York laboratory maintains some 1,380 pieces of equipment for product testing.

The Norcross (Atlanta) facility and the South San Francisco laboratory normally maintain some 35 and 57 test instruments, respectively, for product testing.

Test equipment which is not available at the Cortland laboratory would be leased as necessary. Test equipment not available at either the Norcross or the South San Francisco facilities would either be borrowed from the Cortland laboratory or leased locally.

One respondent (Ex. 3–7, p. 3) believed that the applicant has attempted to cover too many product categories for the facilities, test equipment, and staff resources of the firm. OSHA is satisfied that ETL has adequate facilities, personnel and test equipment to accomplish the services required for its present workload in the applied-for product categories.

This same respondent (Ex. 3–7, p. 3) noted further that ETL applied to test two more test standards than appeared in its January 1989 Directory of Listed Products, and felt that recognition should not be extended to any test standard or product category for which no experience can be demonstrated. However, 29 CFR 1910.7 merely requires that the applicant have the capability to do the work. OSHA believes that an otherwise qualified laboratory may be extended recognition to test a certain product category if the personnel have adequate expertise in a given area, even if that laboratory does not have a background of testing a particular product category. To decide differently would have the effect of inhibiting an otherwise qualified laboratory's growth into new areas merely because they had not done the work previously. OSHA's requirements for recognition as a nationally recognized testing laboratory were not intended to have this effect. ETL has staff expertise in those categories not yet listed. Additionally, many of the test standards which ETL seeks to use and which have not appeared in the ETL Directory are closely allied to those already listed. OSHA will, of course, continue to monitor the operations of ETL as part of its oversight function.

The EL project engineer utilizes written standard operating procedures to describe and evaluate the construction of a sample of the product submitted for testing. These procedures refer to specific sections of the standards. The procedures are detailed in the on-site review reports. See the On-Site Evaluations (Exs. 2B(1), 2C(1), and 2D(1), pp. 3–4).

The applicant has various procedures in place to help assure consistent test protocol and interpretations. For example, a test method must be written for each test performed, and must be of sufficient detail to permit duplication of the test at a subsequent time. Copies of all these test methods are maintained by the laboratories and, as appropriate, filed in the test record of the product listing report. ETL also retains a Technical Advisory Council composed of leading national experts in the field of public safety which advises it on interpretations of codes and standards. In addition, issues concerning the investigation that are not covered by the standard or that require an interpretation of the standard are discussed in meetings of key personnel. Engineering decisions to resolve these issues are based upon input from the laboratory staff, members of the Technical Advisory Council and, in some cases, the organization that developed the standard (see the On-Site Evaluations, Exs. 2B(1), 2C(1), and 2D(1), p. 3). OSHA considers these procedures to be adequate.

The on-site review reports (Exs. 2B, 2C, and 2D) revealed that ETL has a comprehensive calibration program for its test equipment. A separate calibration laboratory at the Cortland site calibrates, repairs, and maintains most of the test equipment used for product testing for all three laboratory locations. ETL permits outside vendor calibration services to be used when approved by the appropriate laboratory official. A written Equipment Calibration Program is available and, as detailed in the on-site evaluation of the Cortland facility (Ex. 2B(1)), is in use. The Program includes periodic calibration, color-coded labels to identify calibration standards, date of last calibration, and due date for next calibration. The Calibration Manager is responsible for specifying the test equipment calibration intervals, typically on an annual basis, and for retention of records of calibration, repair and maintenance of the test equipment, and for the decision to use outside vendor calibration services. The Calibration Manager also issues monthly reports to appropriate personnel indicating the equipment due for calibration during the following month. These reports are generated by a computer data base.

ETL has a written Quality Control (QC) Systems Manual which describes the appointment of an auditor to make periodic reviews of each division to

determine compliance with the manual. It also details the responsibilities of each division manager to implement specific procedures. (See the On-Site Evaluations, Exs. 2B(1), 2C(1), and 2D(1), p. 6).

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. ETL has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL shall provide certain follow-up procedures to the extent necessary for the particular equipment or material to be listed, labeled or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting of field inspections to monitor and assure the proper use of the label.

The Follow-Up Listing Program is the responsibility of the Field Engineering Services Division located at the Cortland site. ETL requires the client/submitter to sign a listing, labeling, and follow-up service agreement and to allow an initial plant inspection prior to applying the laboratory's listing label to the product. This initial inspection is for the purpose of reviewing the client's quality control program and its ability to conduct any production line tests required by the standard. Follow-up inspections on actively produced products are conducted at the manufacturing site on a quarterly basis. ETL conducts unannounced inspections and selects random samples of the listed products and components for inspection and test at any time. The laboratory has written procedures for conducting these inspections. Follow-up inspections are scheduled by the Manager of the Field Engineering Services and assigned to selected field inspectors under contract to ETL. Any discrepancies discovered between the product and the listing report during the inspection are documented and reported to the laboratory. The use of the laboratory's listing mark is suspended until corrective action is taken to resolve the discrepancies. Field inspectors are audited by the Field Engineering Office at least once each year. ETL has the right to notify vendors, authorities, potential users, and others of an improper or unauthorized use of its mark. The printing and distribution of the listing label is controlled by ETL. The manufacturer must account for all labels.

Field inspections may be necessary under various circumstances. The determination on whether to conduct these field inspections routinely, sporadically, or not at all for a given product, will depend upon the results of the factory follow-up and other relevant considerations. As an example, field inspections may be appropriate when the laboratory has reason to believe that its mark or label is being improperly used. Such belief could result from observed events or information from complainants. Another situation necessitating a field inspection could arise where it is impractical to conduct regular factory inspections because of a limited production schedule. It is expected that the decision on conducting field inspections will be continually reevaluated to fit the circumstances. ETL, in the written terms and conditions of its follow-up services, states that it will make periodic examinations or tests of products at the factory and may, from time to time, select samples from the factory, the open market, or elsewhere to be sent to a ETL testing station for examination or test to determine compliance with ETL's requirements.

The on-site review demonstrated that ETL has experience with a follow-up program to correct product problems and insure the integrity of the label. Moreover, OSHA will periodicially review the follow-up procedures to evaluate their efficacy.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendor of equipment or materials being tested. The applicant stated in its application that, with reference to services performed, there are no managerial affiliations with any producer, supplier, or vendor, and there are no securities investments or stock options in the product line. Furthermore, the employment security of personnel is free from influence by any producer, supplier, or vendor and, finally, the laboratory is not owned, operated, or controlled by any producer, supplier or vendor.

ETL has stated that it will maintain this same level of independence throughout its existence as a Nationally Recognized Testing Laboratory.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system.

The ETL application as well as the on-site review report indicate that ETL does maintain effective procedures for producing creditable findings and reports that are objective. As part of the review, several test reports were reviewed and found to be consistent with the intent of 1910.7(b)(4)(i) to produce creditable findings and reports. This requirement is, however, essentially procedural in nature (see 53 FR at 12111, 4/12/88). OSHA believes that its evaluation of ETL's capabilities, including its personnel, equipment, facilities, calibration program, and quality assurance program, as well as its independence, among other things, indicates that there are appropriate procedures being implemented to produce objective test reports that are without bias.

The requirement that a laboratory have a fair and reasonable system for handling complaints was intended to allow interested parties an avenue of redress when, for example, it was believed that an item had been improperly labeled or that an inappropriate test procedure had been applied. It was not intended to interfere with any laboratory's recognized responsibility to decide whether to approve, list, label, or certify any particular type of equipment or material which it had tested. Indeed, many of the ANSI test standards include in the preface a statement specifically indicating that an item may not be acceptable even though it may meet all the test criteria. In fact, 29 CFR 1910.7(b)(4)(ii) was intended to help settle complaints and disputes after an item had been approved, listed, labeled, or certified.

One respondent (Ex. 3–7, p. 2) questioned ETL's dispute handling procedure claiming that inconsistent results will be inherent in the program since the product manufacturer is unable to question any of the decision-making by ETL regarding implementation of a test standard for a particular client. The essential ingredient in 29 CFR 1910.7(b)(4)(ii) is that all interested persons have access to a dispute handling system which is both "fair and reasonable" (cf *ASME* v.

Hydrolevel 456 U.S. 556, 102 S.Ct. 1935 (1982)). ETL's appeals procedure, which includes an ad hoc appeals committee appointed by the ETL president, appears to provide a fair and reasonable method of dispute handling.

While ETL's formal appeals procedure was originally limited to disagreements between the client and the laboratory regarding the evaluation and testing of products to a standard, it has since been expanded to address and resolve complaints from end users and other interested parties regarding products listed by ETL.

One commentator (Ex. 3–7, p.3) objected to the lack of coverage of dispute resolution in the ETL application, noting that no information is presented describing the ETL appeals procedure. A written appeals procedure describing the hierarchy of appeals and assuring procedural safeguards has been included in the Laboratory's Quality Control Manual (Ex. 5). OSHA believes that the ETL appeals procedures, as detailed in this Quality Control Manual, are consistent with the requirement that a recognized NRTL maintain effective procedures for handling complaints and disputes under a fair and reasonable system.

Test Standards

Section 1910.7 requires that a nationally recognized testing laboratory use "appropriate test standards". The regulation defines an appropriate test standard as a document which specifies the safety requirements for specific equipment or a class of equipment and is recognized in the United States as providing adequate level of safety, compatible with and maintained current with periodic revisions of applicable national codes, and developed by a standards developing organization under a system of providing for broad input from interested parties § 1910.7(c)(1), (2), and (3)). Section 1910.7 also specifies as "appropriate" any standard that is currently designated as an ANSI safety designated product standard or an ASTM test standard used for evaluation of products or materials. (See § 1910.7(c)(4)). Laboratories may also use other test standards that the Assistant Secretary of Labor has evaluated to determine that such standard provides an adequate level of safety. (See § 1910.7(d)). In this case, ETL has indicated that it will use the ANSI, ANSI/UL and UL test standards listed below. The ANSI and ANSI/UL standards are appropriate test standards within the meaning of 29 CFR 1910.7 (b) and (c)(4). All of the UL test standards which ETL has applied to use, with the exception of nine, have also been adopted by ANSI. Eight of these nine UL standards (UL No's. 141, 416, 544, 733, 763, 795, 1059, and 1244) have not been considered for adoption by ANSI as ANSI/UL standards since similar standards sponsored by other organizations have previously received ANSI approval. The one remaining UL standard (UL 775) is either in canvass or about to be canvassed to establish a consensus for approval by ANSI. As to the non-ANSI UL test standards ETL has applied to use, OSHA has examined the status of these Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation and has determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible with and remain current with periodic revisions of applicable national codes and installation standards (that is, they have all been revised within the past five years); and they are developed by a standards developing organization (i.e., UL) under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

One of the commentators (Ex. 3–7, p. 2) stated that the test standards "are listed without their date of issue" and raised the spectre of inconsistency; this commentator believes "there is need for assurance of testing to latest versions of the standard". ETL tests to the latest published versions of the test standards. ETL indicated that part of its testing includes a Revision Subscription Service to automatically obtain the latest revisions of the standards. The main (Cortland) laboratory maintains a central standards library and distributes updates of the standards to the engineers at the Cortland site, and to the Norcross laboratory. The South San Francisco laboratory receives copies of the standards directly from Underwriters Laboratories Inc. (see Ex. 2B, p. 5, Ex. 2C, p. 5, and Ex. 2D, p. 5). The procedures identified by ETL indicate its capability to test to the latest revisions of the test standards. This is the same level of assurance that would be required of other recognized laboratories. The procedures to be followed in the event of test standard changes are adequately stated in Appendix A of 29 CFR 1910.7. The commentator also questioned whether the ANSI implementation of each revision or the UL implementation of each revision of an ANSI/UL standard will be applicable. The standard effective date as established by UL is generally applicable. It would be a rarity if such a situation would result in potentially different levels of safety. If such were the case, however, ETL would use the more safe application. (Ex. 4–1, p. 2).

Other Issues

One of the respondents (Ex. 3–7) raised several issues that were not directly relevant to the issue of ETL meeting the definition of an NRTL as set forth in 29 CFR 1910.7. These comments were general criticisms of the standard. For example, one such comment focused on the need to designate and use a single test standard for each product. (Ex. 3–7, pp. 1–2). This issue had been raised by the same respondent during the rulemaking proceeding and was discussed and resolved in the preamble to the final rule (see 53 FR at 12108–12109, 4/12/88). Since these general issues were raised and resolved during the promulgation of the standard it is not now timely to comment on them.

Two other issues, directly related to ETL, were also raised. One commentator (Ex. 3–7, p. 4) suggested that ETL's organizational chart, showing a "Design Sources" unit under the Business Development Group, would constitute a potential "conflict of interest if (the) laboratory participates in any manner in the design of a product which the laboratory is to evaluate". In certain circumstances such action might compromise the ability of a laboratory to produce test results which are objective and unbiased and might adversely impact their independence. However, ETL stipulates that the "Design Sources" unit shown on their organizational chart refers to test facility design services and not product design services (see Ex. 4–1, p. 2). OSHA finds ETL's response to be adequate and believes no further investigation is necessary.

The second issue raised by the respondent (Ex. 3–7, p. 4), had to do with the ETL application description of an "on-site" test procedure performed at a location where an item of commercial or industrial equipment is installed. The respondent believes that, while that type of testing may be valid, it should be the exception rather than the rule and should only include custom installations where the manufacturer's self-certification is usually the only available

option. The applicant's response to this comment (Ex. 4–1, p. 3) is that ETL's test activity is generally limited to equipment already installed where this is the only alternative to manufacturer self-certification. This service utilizes a special serialized label to identify it as distinct from the labeling and listing program. Reports are maintained against the specific individual pieces of apparatus and referenced against the serial number appearing on the label. In any event, this type of testing is outside of the scope of 29 CFR 1910.7 and, therefore, is not considered to be part of this recognition.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, the OSHA staff finding including the on-site review report, and the comments presented during the public review and comment period, OSHA finds that ETL Testing Laboratories, Inc., has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, ETL Testing Laboratories, Inc., is hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

ETL has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction:

ANSI/UL 4 Armored Cable
ANSI/UL 20 General-Use Snap Switches
ANSI/UL 45 Portable Electric Tools
ANSI/UL 48 Electric Signs
ANSI/UL 50 Electrical Cabinets and Boxes
ANSI/UL 67 Electric Panelboards
ANSI/UL 73 Electric Motor-Operated Appliances
ANSI/UL 82 Electric Gardening Appliances
ANSI/UL 83 Thermoplastic-Insulated Wires and Cables
ANSI/UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 98 Enclosed and Dead-Front Switches
ANSI/UL 114 Electric Office Appliances and Business Equipment
ANSI/UL 122 Photographic Equipment
ANSI/UL 130 Electric Heating Pads
UL 141 Garment Finishing Appliances
ANSI/UL 153 Portable Electric Lamps
ANSI/UL 174 Household Electric Storage-Tank Water Heaters
ANSI/UL 187 X-Ray Equipment
ANSI/UL 197 Commercial Electric Cooking Appliances
ANSI/UL 231 Electrical Power Outlets
ANSI/UL 250 Household Refrigerators and Freezers
ANSI/UL 291 Automated Teller Systems
ANSI/UL 296 Oil Burners
ANSI/UL 298 Portable Electric Hand Lamps
ANSI/UL 303 Refrigeration and Air Conditioning Condensing and Compressor Units
ANSI/UL 310 Electrical Quick-Connect Terminals
ANSI/UL 325 Door, Drapery, Gate, Louver, and Window Operators and Systems
ANSI/UL 399 Drinking-Water Coolers
ANSI/UL 412 Refrigeration Unit Coolers
UL 416 Refrigerated Medical Equipment
ANSI/UL 427 Refrigerating Units
ANSI/UL 429 Electrically Operated Valves
ANSI/UL 430 Electric Waste Disposers
ANSI/UL 464 Audible Signal Appliances
ANSI/UL 465 Central Cooling Air Conditioners
ANSI/UL 466 Electric Scales
ANSI/UL 471 Commercial Refrigerators and Freezers
ANSI/UL 474 Dehumidifiers
ANSI/UL 478 Information-Processing and Business Equipment
ANSI/UL 482 Portable Sun/Heat Lamps
ANSI/UL 484 Room Air Conditioners
ANSI/UL 489 Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 496 Edison Base Lampholders
ANSI/UL 497 Protectors for Communication Circuits
ANSI/UL 498 Electrical Attachment Plugs and Receptacles
ANSI/UL 499 Electric Heating Appliances
ANSI/UL 506 Speciality Transformers
ANSI/UL 507 Electric Fans
ANSI/UL 508 Electric Industrial Control Equipment
ANSI/UL 519 Impedance-Protected Motors
ANSI/UL 541 Refrigerated Vending Machines
ANSI/UL 542 Lampholders, Starters, and Starter Holders for Fluorescent Lamps
UL 544 Electric Medical and Dental Equipment
ANSI/UL 547 Thermal Protectors for Electric Motors
ANSI/UL 559 Heat Pumps
ANSI/UL 560 Electric Home-Laundry Equipment
ANSI/UL 563 Ice Makers
ANSI/UL 574 Electric Oil Heaters
ANSI/UL 609 Local Burglar-Alarm Units and Systems
ANSI/UL 621 Ice Cream Makers
ANSI/UL 639 Intrusion-Detection Units
ANSI/UL 705 Power Ventilators
ANSI/UL 726 Oil-Fired Boiler Assemblies
ANSI/UL Oil-Fired Central Furnances
ANSI/UL 731 Oil-Fired Unit Heaters
ANSI/UL 732 Oil-Fired Water Heaters
UL 733 Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 749 Household Electric Dishwashers
ANSI/UL 751 Vending Machines
UL 763 Motor-Operated Commercial Food Preparing Machines
UL 775 Graphic Arts Equipment
ANSI/UL 778 Motor-Operated Water Pumps
UL 795 Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796 Electrical Printed-Wiring Boards
ANSI/UL 813 Commercial Audio Equipment
ANSI/UL 817 Cord Sets and Power-Supply Cords
ANSI/UL 834 Heating, Water Supply, and Power Boilers—Electric
ANSI/UL 845 Motor Control Centers
ANSI/UL 854 Service-Entrance Cables
ANSI/UL 858 Household Electric Ranges
ANSI/UL 863 Time-Indicating and Recording Appliances
ANSI/UL 867 Electrostatic Air Cleaners
ANSI/UL 869 Electric Service Equipment
ANSI/UL 873 Elecrical Temperature-Indicating and Regulating Equipment
ANSI/UL 883 Fan-Coil Units and Room Fan-Heater Units
ANSI/UL 891 Dead-Front Electrical Switchboards
ANSI/UL 913 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous Locations
ANSI/UL 917 Clock-Operated Switches
ANSI/UL 921 Commercial Electric Dishwashers
ANSI/UL 923 Microwave Cooking Appliances
ANSI/UL 935 Fluorescent-Lamp Ballasts
ANSI/UL 943 Ground-Fault Circuit Interrupters
ANSI/UL 969 Marking and Labeling Systems
ANSI/UL Motor-Operated Household Food Preparing Machines
ANSI/UL 984 Hermetic Refrigerant Motor-Compressors
ANSI/UL 987 Stationary and Fixed Electric Tools
ANSI/UL 998 Humidifers
ANSI/UL 1004 Electric Motors
ANSI/UL 1005 Electric Flatirons
ANSI/UL 1008 Automatic Transfer Switches
ANSI/UL 1012 Power Supplies
ANSI/UL 1017 Electric Vaccum Cleaner Machines and Blower Cleaners
ANSI/UL 1020 Thermal Cutoffs for Use in Electrical Appliances and Components
ANSI/UL 1025 Electric Air Heaters
ANSI/UL 1026 Household Electric Cooking and Food-Serving Appliances
ANSI/UL 1029 High-Intensity-Discharge Lamp Ballasts
ANSI/UL 1030 Sheathed Heating Elements
ANSI/UL 1042 Electric Baseboard Heating Equipment
ANSI/UL 1054 Special-Use Switches
UL 1059 Electrical Terminel Blocks
ANSI/UL 1077 Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081 Electric Swimming Pool Pumps, Filters, and Chlorinators
ANSI/UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083 Household Electric Skillets and Frying-Type Appliances

ANSI/UL 1086 Household Trash Compactors
ANSI/UL 1096 Electric Central Air-Heating Equipment
ANSI/UL 1097 Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1236 Electric Battery Chargers
UL 1244 Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261 Electric Water Heaters for Pools and Tubs
ANSI/UL 1262 Laboratory Equipment
ANSI/UL 1270 Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1410 Television Receivers and High-Voltage Video Products
ANSI/UL 1411 Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1414 Across-the-Line, Antenna-Coupling, and Line-By-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1433 Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436 Outlet Circuit Testers and Similar Indicating Devices
ANSI/UL 1438 Household Electric Drip-Type Coffee Makers
ANSI/UL 1453 Electric Booster and Commercial Storage Tank Water Heaters
ANSI/UL 1564 Industrial Battery Chargers
ANSI/UL 1570 Fluorescent Lighting Fixtures
ANSI/UL 1571 Incandescent Lighting Fixtures
ANSI/UL 1572 High Intensity Discharge Lighting Fixtures
ANSI/UL 1585 Class 2 and Class 3 Transformers
ANSI A90.1 Safety Standard for Belt Manlifts
For purposes of certification using the following standards, only equipment designed for use with "liquefied petroleum gas" (also known as "LP-Gas" or "LPG") is intended.
ANSI Z21.1 Household Cooking Gas Appliances
ANSI Z21.5 Gas Clothes Dryers
ANSI Z21.10 Gas Water Heaters
ANSI Z21.11 Unvented Room Heaters
ANSI Z21.12 Draft Hoods
ANSI Z21.13 Gas-Fired Low-Pressue Steam and Hot Water Heating Boilers
ANSI Z21.15 Manually Operated Gas Valves
ANSI Z21.17 Domestic Gas Conversion Burners
ANSI Z21.18 Gas Appliance Pressure Regulators
ANSI Z21.20 Automatic Gas Ignition Systems and Components
ANSI Z21.21 Automatic Valves for Gas Appliances
ANSI Z21.23 Gas Appliance Thermostats
ANSI Z21.35 Gas Filters on Appliances
ANSI Z21.40.1 Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.47 Gas-Fired Central Furnaces
ANSI Z21.48 Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49 Gas-Type Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.56 Gas-Fired Pool Heaters
ANSI Z83.4 Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.8 Gas Unit Heaters
ANSI Z83.9 Gas-Fired Duct Furnaces
ANSI Z83.11 Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12 Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13 Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14 Gas Food Service Equipment—Counter Appliances
ANSI Z83.15 Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16 Gas-Fired Unvented Commercial and Industrial Heaters

ETL Testing Laboratories, Inc., also must abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of the "FACTS" program, under which ETL might rely on some test results from certain highly qualified manufacturers (clients) in the evaluation of a product for listing or approval;

The Occupational Safety and Health Administration shall be allowed access to ETL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ETL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ETL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ETL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ETL will continue to meet the requirements for recognition in all areas for which it has applied; and

ETL will cooperate with OSHA at all times to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

Effective Date: This recognition will become effective on September 13, 1989, and will be valid for a period of five years from that date, until September 13, 1994, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 7th day of September 1989.

Alan C. McMillan,

Acting Assistant Secretary.

[FR Doc. 89-21470 Filed 9-12-89; 8:45 am]

BILLING CODE 4510-26-M

Puerto Rico State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On August 30, 1977, notice was published in the **Federal Register** (42 FR 43628) of the approval of the Puerto Rico plan and the adoption of subpart FF to part 1952 containing the decision.

The Puerto Rico plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

In response to Federal standards changes, the State has submitted by letter dated November 12, 1987 from Filiberto Cruz Aguila, Assistant Secretary for OSHO, to Regional Administrator James W. Stanley, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration standards for Hazardous Waste Operations and Emergency Response; Interim Final Rule, 29 CFR 1910.120, as published in the **Federal Register** (51 FR 45654) dated December 19, 1986, and corrections as published in the **Federal Register** (52 FR 16241) dated May 4, 1987. These standards which are contained in the Puerto Rico Regulations, Number Four (equivalent to 29 CFR 1910) were promulgated by resolutions adopted by the Puerto Rico Department of Labor and Human Resources on September 14, 1987, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

The State has also submitted by letter dated January 19, 1988, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration standards for Commercial Diving—Final Rule; Technical Amendments, 29 CFR 1910.430, as published in the **Federal**

Register (51 FR 33033) dated September 18, 1986; Accident Prevention Tags, 29 CFR 1910.145, as published in the Federal Register (51 FR 33251) dated September 19, 1986; Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks; 29 CFR 1910 and 1915, as published in the Federal Register (51 FR 34552) dated September 29, 1986; and Hazard Communication; Definition of Trade Secret and Disclosure of Trade Secrets to Employees, Designated Representatives and Nurses, 29 CFR 1910.1200, as published in the Federal Register (52 FR 34590) dated September 30, 1986.

These standards which are contained in the Puerto Rico Rules and Regulations, Number Four (equivalent to 29 CFR 1910) were promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on July 1, 1987, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

2. Decision

Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly are hereby approved.

3. Location of Supplement for Inspection and Copying

A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 670, 201 Varick Street, New York, New York 10014; Puerto Rico Department of Labor and Human Resources, Prudencio Rivera Martinez Bldg., Munoz Rivera Avenue 505, Hato Rey, Puerto Rico 00917; and the Directorate of Federal-State operations, Room N3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Puerto Rico State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State Law and further participation would be unnecessary.

The decision is effective September 13, 1989 (sec. 18 Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)). Signed at New York City, New York, this seventh day of March 1988.

James W. Stanley,

Regional Administrator.

[FR Doc. 89–21471 Filed 9–12–89; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMISSION ON CHILDREN

Hearing

Background

The National Commission on Children was created by Public Law 100–203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President.

2. Twelve members appointed by the Speaker of the House of Representatives.

3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces the first hearing of the National Commission on Children to be held in Chicago, Illinois.

Time: 1:00 pm–4:30 pm, Monday, September 25, 1989.

Place: Dirksen Federal Building, Ceremonial Court Room, 219 Dearborn Street, Chicago, Illinois.

Status: 1:00 pm–4:30 pm, open to the public.

Agenda: Healthy Mothers–Healthy Babies.

Contact: Jeannine Atalay, (202) 254–3800.

Dated: Sepember 7, 1989.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 89–21581 Filed 9–12–89; 8:45 am]

BILLING CODE 6820–37–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on September 27, 1989, Room P–110, 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, September 27, 1988–8:30 a.m. until the conclusion of business.*

The Subcommittee will review the proposed Access Authorization Rule, and performance indicators.

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 or whether the meeting has been cancelled or rescheduled can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio G. Igne (telephone 301/492–8192) 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.

Dated: September 6, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–21430 Filed 9–12–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-255]

Consumers Power Co.; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant, located in Van Buren County, Michigan.

The proposed amendment would revise the Technical Specifications (TS) related to the applicability of limiting conditions for operation (LCO) and surveillance requirements of TS Tables 3.17.1, 4.1.1, 4.1.2 and section 4.0, based in part on recommendations provided by the staff in Generic Letter (GL) 87-09. Several changes of an administrative nature are also requested in accordance with the licensee's application for amendment dated April 3, 1989.

Specification 4.0.3 is added to incorporate an appropriate time period for completion of missed surveillance testing prior to initiating the Action Requirements, when the Action Requirements provide a restoration time of less than 24 hours.

Specification 4.0.4 is added to strengthen the definition of the plant surveillance program and to provide conformance with the Standard Technical Specifications (STS).

Specification 4.0.5 is added to consolidate requirements for inservice inspection of ASME Code Class 1, 2, and 3 components. The new specification includes requirements previously addressed by Specification 4.3 and adds appropriate requirements for inservice testing of valves. The portions of Specifications 4.3 superseded by this revision are deleted.

TS Tables 3.17.1, 4.1.1, and 4.1.2 are revised to identify operational conditions during which certain reactor protection system instrumentation is required to be operable, and when associated instrument checks are required. These changes are needed to ensure consistency with the proposed revisions to Section 4.0.

Several administrative changes deleting outdated references and statements, and the addition of relevant Basis statements for the changes discussed above, are also included.

Before the issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves 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 amendment would not (1) involve a significant increase in the probability or consequences or 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 changes against the above three standards as required by 10 CFR 50.91(a) and has concluded:

1. The proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed changes to the TS do not involve physical changes to the plant. The changes do include requirements for testing of ASME Class 1, 2, and 3 valves. This testing is presently accomplished under an administratively controlled program at Palisades and, therefore, no additional surveillance tests are required. The addition of reactor protection system (RPS) instrumentation operability requirements and exceptions to when certain RPS surveillances are required to be performed is consistent with the plant safety analysis and the STS.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical modification to the plant is involved in this proposed change. The operability and surveillance requirements for RPS instrumentation are not reduced with respect to the safety analysis.

3. The proposed change does not involve a significant reduction in a margin of safety. The addition of operabillity/applicability requirements for RPS instrumentation to TS Table 3.17.1 is consistent with the safety analysis requirements. The revisions to Tables 4.1.1 and 4.1.2 allow surveillances to be omitted when the RPS equipment is not required to be operable. The addition of Specifications 4.0.3, 4.0.4, 4.0.5, and a Basis statement for Section 4.0 serves to strengthen the definition of the Palisades Plant surveillance program and will ensure that interpretation of the specifications of Section 4.0 will be consistent with their intent. Incorporation of a time limit into Specification 4.0.3 for completion of missed surveillances prior to initiating the applicable Action Requirement balances the risks associated with the time allowance, against the risks associated with the potential for plant upset and challenge to safety systems when the alternative is a shutdown to comply with Action Requirements before the surveillance can be completed. The addition of Specification 4.0.5 includes inservice testing requirements for both pumps and valves versus the present 4.3 requirements which apply only to testing of pumps. Therefore, there is no reduction in a 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 amendment involves no significant hazards consideration.

The staff also concludes that the licensee's no signficant hazards determination given above would apply to the administrative changes identified.

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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 8:15 a.m. to 4 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 13, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional 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. Request for a hearing and petitions for leave to intervene must 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 the 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 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 request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it 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. 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, 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 (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John O. Thoma, Acting Director, Project Directorate III–1; 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 Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, 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, designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the 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, 2120 L Street NW., Washington, DC and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 30th day of August 1989.

For the Nuclear Regulatory Commission.

Albert De Agazio,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21495 Filed 9–12–89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–1002.

Extension

Form SE, File No. 270–289
Form ID, File No. 270–291
Form ET, File No. 270–290

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Forms ET, SE, and ID under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1938, the Investment Advisers Act of 1940 and the Investment Company Act of 1940, for use by registrants voluntarily participating in the Edgar pilot project. The first, Form SE, is used by new registrants to file

paper copies of exhibit documents that cannot be transmitted electronically. The second, Form ET, accompanied tapes and diskettes submitted to the Commission. The third, Form ID, is used to obtain company identification numbers, passwords, and personal identification numbers to access to Edgar system.

Each of the estimated 642 respondents using Form SE incurs an average estimated .1 burden hour to comply with the Form requirements. Each of the 263 respondents using Form ET incurs an average .25 burden hour to comply with the Form. Each of the 8,879 respondents using Form ID incurs an average .15 estimated burden hour to comply with the Form.

The estimated average burden hours are solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative sample or study of the costs of the Securities and Exchange Commission's rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street NW., Washington, DC. 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget [Paperwork Reduction Projects 3235–0327–Form SE, 3235–0328, Form ID, and 3235–0329, Form ET], Room 3208 New Executive Office Building, Washington, DC 20543.

Dated: August 31, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–21439 Filed 9–12–89; 8:45 am]

BILLING CODE 8010–01–M

[34–27227; File No. 600–24]

Self-Regulatory Organizations; Delta Government Options Corporation; Application for Registration as a Clearing Agency; Request for Additional Comments

September 7, 1989.

On July 29, 1988, Delta Government Options Corporation ("Deltas") filed an application under section 19(a) of the Securities Exchange Act of 1934 ("Act") [1] for registration as a clearing agency under section 17A of the Act.[2] On August 5, 1988, the Commission published notice of Delta's application in the Federal Register and requested comment on the application.[3] On October 7, 1988, Delta filed an amendment to its application and on October 18, 1988, notice of that amendment was published in the Federal Register and comments again were requested.[4] On January 12, 1989, the Commission approved, on a temporary basis for a period of 36 months, pursuant to sections 17A(b)(2) and 19(a) of the Act, Delta's application for registration as a clearing agency.[5]

On August 17, 1989, the U.S. Court of Appeals for the Seventh Circuit ("Court") issued an opinion in *Board of Trade* v. *SEC*, Civ. Doc. Nos. 89–1084 and 89–1449 slip op. (7th Cir. Aug. 17, 1989), in which the Court vacated the Commission's Order temporarily registering Delta as a clearing agency ("Order"), deferring for 120 days after the date of its mandate the effectiveness of that decree. The Commission's Order concluded that Delta, as required by section 17A(b)(3)(A) of the Act, was so organized and had the capacity to comply with the Act and rules and regulations thereunder. The Court held, however, that "(b)efore concluding that Delta's proposed operations could 'comply' with the '34 Act, the Commission had to determine that the (Over-The-Counter Options Trading) System [with which Delta is affiliated] is not an exchange." slip op. at 21. Because the Commission's Order contained no determination as to the status of the system as an exchange, the Court vacated the Commission's Order, but deferred for 120 days the effectiveness of the judgement. The ourt stated, "the SEC has 120 days after that (the date of the Court's mandate) to decide whether the System is an exchange and to re-register Delta or decline to do so." slip op. at 22. The Court stated that a Commission decision during that time would be effective as a new decision.

In light of the Court's decision, the Commission requests further general comment on Delta's clearing agency registration application. Also, the Commission invites commentators to address specifically whether the System should be registered as an exchange and whether Delta has demonstrated an ability to promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds within its custody or control. The Commission will consider all written comments previously received concerning Delta's clearing agency registration application. The comment period will terminate 30 days from the date of publication of this notice in the Federal Register. Due to time constraints placed on the Commission by the Court, the comment period will not be extended.

Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. 600–24. Copies of the application and all written comments will be available for inspection at the Securities and Exchange Commission's Pubic Reference Room, 450 Fifth Street NW., Washington, DC.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–21623 Filed 9–12–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27210; File No. IDD–89–03]

Self-Regulatory Organizations; the Options Clearing Corp.; Order Approving Proposed Amendment to Index Participations Disclosure Document

On August 24, 1989, the Options Clearing Corporation ("OCC"), in conjunction with the Philadelphia ("Phlx") and American ("Amex") Stock and the Chicago Board Options ("CBOE") Exchanges, Inc. [collectively, the self-regulatory organizations ("SROs")] submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 9b–1 of the Securities Exchange Act of 1934 ("Act") [1] copies of an amendment to the Index Participations ("IPs") Disclosure Document ("IDD").[2]

The proposed amendment to the IDD clarifies the disclosure concerning the OCC cash-out of outstanding IP longs contained in a recent amendment to the

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[1] 15 U.S.C. 78s(a) (1988).

[2] 15 U.S.C. 78q–1 (1988).

[3] *See* Securities Exchange Act Release No. 25958 (August 1, 1988), 53 FR 29536. Four letters of comment were received, all opposing Delta's application.

[4] *See* Securities Exchange Act Release No. 26172 (October 12, 1988), 53 FR 40816. Four letters of comment were received, all opposing Delta's application.

[5] *See* Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010.

[1] 17 C.F.R. 240.9b–1 (1988).

[2] *See* Letter from James R. McDaniel, Schiff Hardin & Waite, OCC legal counsel, to Richard G. Ketchum, Director of Market Regulation, SEC, dated August 24, 1989.

IDD,[3] submitted by the OCC and approved by the Commission, in response to the August 18, 1989 opinion of the United States Court of Appeals for the Seventh Circuit ("Seventh Circuit") setting aside the Commission order approving the proposed SRO rule changes to list for trading and to issue, clear, and settle IPs.[4] Specifically, the amendment notes that all IP longs which are exercised by the OCC on September 14, 1989 [5] shall be entitled to receive, and all IP shorts will be obligated to pay (1) the accumulated dividend equivalents on September 15, 1989, and (2) the cash-out value of such IPs on September 18, 1989. The amendment notes further that any holder of physical IPs (*i.e.*, Amex Equity Index Participations), who is entitled and desires to exercise the delivery privilege in respect to such IPs, must tender an exercise notice to OCC on September 14, 1989, or OCC will exercise the IP cash-out privilege in respect of such IPs.

Rule 9b–1 provides that an options market must file five copies of amendments to a disclosure document with the Commission at least 30 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors.[6]

The Commission has reviewed the IDD amendment and finds that it provides adequate disclosure of the change in IPs' status due to the Seventh Circuit opinions as well as the OCC's determination to exercise the cash-out privilege on behalf of all outstanding IP longs. In addition, the Commission believes it is consistent with the public interest and the protection of investors to allow its distribution as of September 1, 1989, less than 30 days prior to the date definitive copies are furnished to customers. Specifically, allowing immediate distribution of the IDD amemdment should help eliminate any possible investor confusion concerning the rights and obligations of IP longs and shorts in respect of the OCC cash-out of outstanding IP longs.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: September 1, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–21442 Filed 9–12–89; 8:45 am]

BILLING CODE 8010–01–M

[34–27211; File No. SR–OCC–89–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Consolidation of the Membership and Margin Committees

September 1, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on August 21, 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

File No. SR–OCC–89–11 proposes amendments to OCC's Rules which would consolidate the Membership and Margin Committees.

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 General

The purpose of the proposed rule change is to allow OCC to consolidate its Membership and Margin Committees since the issues considered by the two committees are related.

The Membership Committee and the Margin Committee both work with Clearing Member issues. The Membership Committee reviews applications for Clearing Membership and recommends approval or disapproval thereof. The Margin Committee reviews the financial status of Clearing Members and establishes margin requirements therefor.

Accordingly, since the work of the two committees overlap, the Board of Directors determined that a consolidating of the Committees would best serve the interests of the Clearing Members and the Participant Exchanges.

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

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

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.,

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[3] *See* Securities Exchange Act Release No. 27161 (August 22, 1989), 54 FR 35552.

[4] *Chicago Mercantile Exchange, et al. v. Securities Exchange Commission, et al.*, Nos. 89–1538, 89–1763, 89–1786, 89–2012 (7th Cir., Aug. 18, 1989).

[5] The Seventh Circuit recently extended the date upon which its mandate will issue and the Commission orders will be set aside from September 8 to September 25, 1989. *Chicago Mercantile Exchange, et al. v. Securities and Exchange Commission, et al.*, Nos. 89–1538, 89–1763, 89–1786, 89–2012 (7th Cir., August 25, 1989).

[6] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[7] 17 CFR 200.30–3(a)(12) (1988).

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 File No. SR-OCC-89-11 and should be submitted by October 4, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-21441 Filed 9-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27220; File No. SR-CSE-89-1]

Self-Regulatory Organizations; Cincinnati Stock Exchange; Order Approving Proposed Rule Change Relating to Guaranteed Agency Order Executions

On January 24, 1989, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Exchange Rule 11.9(c) so as to permit the Exchange's Securities Committee to assign the obligation of guaranteeing public agency order executions to one Designated Dealer ("DD") in a new National Securities Trading System ("NSTS") issue.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 26853 (May 22, 1989), 54 FR 23003 (May 30, 1989). No comments were received on the proposal.[4]

The CSE, through its NSTS, guarantees the execution of up to 2,099 shares of public agency market orders at the national best bid or offer. Because NSTS is a multiple market maker system, the obligation to guarantee agency orders rotates daily among DDs in issues for which there is more than one such dealer.

In its filing, the Exchange stated that it is necessary to provide an incentive for prospective market makers to become DDs in issues not yet traded in NSTS so that the Exchange could improve the quality of its markets and also achieve broader coverage of issues in NSTS. Accordingly, the Exchange adopted a policy which permits its Securities Committee ("Committee") to authorize a requesting member to become the "primary" DD [5] in any issue which was not traded in NSTS as of September 9, 1988. Because NSTS is a multiple market maker system, the proposed amendment to Rule 11.9 provides that the obligation to guarantee agency orders will rotate daily among DDs in issues for which there is more than one member as the primary DD in that issue.

As provided in the Exchange's Securities Committee Stock Allocation Policy for DDs ("Policy"),[6] the Committee shall use its best judgment in determining whether to allocate non-NSTS issues to requesting members. As set forth in Section III.B.2 of the Policy, the factors which will be considered by the Committee in making this determination shall include the following: (1) The member's commitment to bring public agency order flow to the CSE in his requested issues; [7] (2) the number of issues requested by the member; (3) the member's capital position; and (4) the member's technical capability. In addition, Section III.B.2 of the policy provides that the Committee will consider the capital, market quality, and performance criteria that members must satisfy in order to be approved as a DD in NSTS issues, as set forth in Section II.A. of the policy, when determining whether to approve a member as a primary DD in a non-NSTS issue.[8] The allocation criteria for NSTS issues set forth in Section II.A. of the policy include the following: (1) The commitment by the requesting member to maintain "competitive" quotation spread and size parameters [9]; (2) the satisfactory past performance of the requesting member; [10] and (3) any other factor which the Committee deems relevant to the public interest, the maintenance of fair and orderly markets, or just and equitable principles of trade.

Stock price	Spread parameters
$0 to $50	No more than ½ point.
$50 to $100	No more than ¾ point.
$100 to $200	No more than 1 point.
Greater than $200	No more than 2 points.
Activity Level	Size
"Active" Stocks (defined as stocks which trade more than 5 million shares per month on a consolidated basis).	No less than 500 shares each side.
Inactive stocks	No less than 200 shares each side.

The exchange has indicated that although the above-described spread and size quotation parameters are not included specifically in the text of the proposed rule change, they have been adopted as binding policy by the Exchange. *See* Letter from David Colker, General Counsel and Vice President, Market Regulation, CSE, to Sharon L. Itkin, Esq., Division of Market Regulation, Securities and Exchange Commission, dated June 22, 1989 ("Letter").

Before a member can be registered as a primary DD, the member must agree to maintain "competitive" quotations throughout the trading day.[11] Exceptions to the primary DD's obligation to maintain competitive quotations will be permitted only during unusual market conditions [12] or as

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] NSTS is an electronic securities communication and execution facility through which bids and offers of competing dealers, as well as public orders, are consolidated for review and execution by users. *See* CSE Rule 11.9(a)(1).

[4] The CSE filed amendment no. 1 to its proposal on May 2, 1989.

[5] Primary DD status in an issue entitles a member to receive all of the guaranteed portion of all public agency market and marketable limit orders even if other DDs subsequently become registered in that issue. The guaranteed portion of an order is equal to 2,099 shares minus the number of shares executed in NSTS against any agency or principal interest, including interest of the DD of the day, priced at the ITS best bid or offer when the order enters the system.

[6] *See* Letter from David Colker, Vice President, Market Regulation and General Counsel, CSE to Howard Kramer, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, dated August 8, 1989.

[7] David Colker indicated to Howard Kramer, Assistant Director, Market Regulation, Securities and Exchange Commission, in a conversion on August 23, 1989, that this includes such factors as the member's commitment to quote tight or large size markets in order to attract order flow to the Exchange. This in no way requires the applicant's firm to direct order flow to the Exchange.

[8] *See* Section II.A of the Policy.

[9] In this context, "competitive" is defined by compliance with the following spread and size parameters:

[10] The committee will consider the following factors in determining whether the member's performance was satisfactory: (1) whether the member maintained competitive quotations in issues for which the member has been acting as DD; (2) trade and share activity in such issues; and (3) the member's cooperation with the Exchange in resolving ITS disputes and NSTS errors.

[11] *See* note 7, *supra*

[12] The Exchange defines "unusual market conditions" for purposes of allowing exceptions to this policy as market conditions during which (1) a trading halt is in effect, or (2) the Exchange is incapable of collecting, processing, disseminating, and receiving quotation information in a manner which accurately reflects the current state of the market. *Id.*

otherwise allowed by an Exchange official.[13]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) [14] of the Act in that the proposal is designed to facilitate transactions in securities and to perfect the mechanism of a national market system. In this regard, the Commission notes that the proposed modifications to the Exchange's stock allocation and order execution procedures, which the CSE states are designed to improve the quality of its markets and to achieve broader coverage of issues in NSTS, may result in improved execution of public customer orders.

The Commission notes that the CSE's Securities Committee Stock Allocation Policy is designed to enhance the quality of the Exchange's markets by ensuring narrow quotation spread parameters, and significant size quotation. In the past, the Commission has recognized the benefits of a multiple market maker system that has elements of a specialist system.[15] The Commission notes that the grafting of elements of a specialist system onto a multiple market maker system may facilitate the execution of customer orders and provide tight and liquid markets. This may be particularly true in less active securities. In this case, the CSE's proposal is designed to improve its DD system and attract a DD who is best able to make tight and liquid markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [16] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Dated: September 5, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-21491 Filed 9-12-89; 8:45 am]

BILLING CODE 8010-01-M

[13] The Exchange President and Vice President for Market Regulations are the officers who have authority to permit exceptions to the new quotation policy. Such officers shall grant exceptions when a system problem prevents a member from imputing his quotations. *Id.*

[14] 15 U.S.C. 78f(b)(5) (1982).

[15] *See* the Commission's approval order of the Chicago Board Options Exchange's proposal to provide for designated dealer status on that exchange.

[16] 15 U.S.C. 78s(b)(2) (1982).

[17] 17 C.F.R. 200.30-3(a)(12) (1988).

[Rel. No. 34-27224; File No. SR-CBOE-89-16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Priority of Bids and Offers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 18, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 6.45 to permit combination orders which are executed in conjunction with stock orders the same priorities as combination orders that do not involve stock transactions and to update the Rule with respect to the limit order book to reflect that Board Brokers are no longer on the Exchange. (Brackets indicate language to be deleted, italic indicate new language.)

Priority of Bids and Offer

Rule 6.45. Except as provided by Rule 6.47 below, the following rules of priority shall be observed with respect to bids and offers:

(a) Priority of bids. The highest bid shall have priority, but where two or more bids for the same option contract represent the highest price and one such bid is displayed [by the Board Broker or Order Book Official] *in the customer limit order book* in accordance with Rule 7.7, such bid shall have priority over any other bid at the post. If two or more bids represent the highest price and a bid [by a Board Broker or Order Book Official] *from the customer limit order book* is not involved, priority shall be afforded to such bids in the sequence in which they are made.

(b) No change.

(c) Openings. Notwithstanding anything in paragraphs (a) and (b) to the contrary, where necessary to achieve a single-priced opening, market orders in which no member or any non-member broker/dealer has an interest shall have priority over limit orders at the same opening price [on the Board Broker's or Order Book Official's] *in the customer limit order* book. The cut-off time for orders entitled to participate in the opening is set forth in Interpretation .02 to Rule 7.4.

(c) Exception. Notwithstanding anything in paragraphs (a) and (b) to the contrary, when a member holding a spread order, a straddle order, or a combination order and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers displayed [by the Board Broker or Order Book Official] *in the customer limit order book* or announced by members in the trading crowd, then the order may be executed as a spread, straddle, or combination at the total credit or debit with one other member without giving priority to bids or offers of members in the trading crowd or of the [Board Broker or Order Book Official] *customer limit order book* that are no better than the bids or offers comprising such total credit or debit. Under the circumstances described above, a stock-option order, as defined in Rule 1.1(ii)(*a*), has priority over the bids and offers of members in the trading crowd but not over the bids and offers [of] *in* the [Board Broker or Order Book Official] *customer limit order book. A stock option order as defined in Rule 1.1(ii)(b), consisting of a combination order with stock, may be executed in conjunction with the exception provisions as provided herein.*

* * * Interpretations and Policies:

.01 When [A Board Broker or Order Book Official] *the customer limite order book* is displaying, pursuant to Rule 7.7, limit orders to sell at ⅛th which have priority pursuant to Rule 6.45, no [Floor Broker] *member*, [Board Broker] or Order Book Official shall hold a market order to sell that series. Whenever this condition occurs, any such market order held by a [Floor Broker, Board Broker] *member* or Order Book Official shall be considered a limit order to sell at a price of ⅛th and the [Floor Broker, Board Broker] *member* or Order Book Official shall change the market sell order to reflect a limit price of ⅛th.

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 proposed rule filing will afford combination orders which are executed in conjunction with stock (conversions and reversals) the same priorities as combination orders that do not involve stock. Current Exchange rules allow combination, spread and straddle orders to touch the customer limit order book on one side (*i.e.*, in one series). The extension of the priority to combination orders with stock does not include straight stock/option orders such as buy writes that only involve one option series. The Exchange believes that the priority of the public customer limit order book will not be greatly affected because of this change. The two-sided option order which is part of a conversion/reversal will only be able to touch the book on one side. In addition, by not extending the exception to straight stock-option orders where the option component consists of only one side, the public customer limit order book will maintain its current priority over any single series (side) option orders.

The filing also addresses the need for the Exchange to update the rules concerning the customer limit order book. There are no Board Brokers on the Exchange and, therefore, their functions as to running the limit order book have been deleted. A new category of members, Designated Primary Market-Makers ("DPM's"), has been created. The DPM has in qualifying securities taken the place of Order Book Officials. As such, the other rule revisions contained herein reflect the deletion of Board Brokers and addition of DPMs.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder, and, in particular, the provisions of section 6(b)(5) of the Act, which provide, among other things, that the rules of the exchange are to be designed to promote just and equitable principles of trade and to protect investors and the public interest.

(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

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 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 October 4, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: September 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-21492 Filed 9-12-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 200.30-3(a)(12) (1986).

[Release No. 34-27219; File No. SR-NASD-89-27]

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Study Outlines and Specification for Series 11 Examination, Assistant Representative-Order Processing

The National Association of Securities Dealers, Inc. ("NASD") submitted the proposed rule change on July 11, 1989, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder, to establish the examination specifications and study outline for the new registration category of Assistant Representative-Order Processing. This new category was proposed in an amendment to Schedule C of the NASD By-Laws in File No. SR-NASD-89-26 and was approved by the Commission on June 12, 1989 (Securities Exchange Act Release No. 26920 (June 12, 1989), 54 FR 26289 (June 22, 1989)].

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 27067, July 26, 1989) and by publication in the **Federal Register** (54 FR 31909, August 2, 1989). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of Section 15A and the rules and regulations thereunder. Specifically, the proposed rule change meets the requirements of section 15A(g)(3)(B) which permits the NASD to "examine and verify the qualifications of an applicant to become a person associated with a member."

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-89-27, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR § 200.30-3(a)(12).

Dated: September 5, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-21494 Filed 9-12-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27207 File No. SR-NSCC-89-08]

Proposed Rule Change by National Securities Clearing Corp. Regarding an Amendment to NSCC's Proposed Rule Filing Concerning Basket Trades

September 1, 1989.

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 August 24, 1989 NSCC filed with the Securities and Exchange Commission the proposed amendment to NSCC-89-08 as described below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to NSCC's proposed rule filing on Basket Trades in order to describe the processing of Basket Trades involving specialists and the establishment of fees for processing of Basket Trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC 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.

(I) The purpose of the proposed rule change is to detail how specialist involvement in New York Stock Exchange Basket Trading will be processed by NSCC.

The Basket Trade currently proposed by the New York Stock Exchange will be comprised of 462 New York Stock Exchange listed securities and 38 non-New York Stock Exchange listed securities. The New York Stock Exchange will require each specialist to maintain two quotes for his securities within the 462 listed securities that are part of the Basket. A Basket Book Dealer will maintain a quote for the 38 non-listed stocks, which are referred to as a "Mini-Basket".

Whenever a Basket Trade is executed where the specialist is involved, the New York Stock Exchange will break down the Basket into the 462 equity trades and a Mini-Basket. NSCC will receive from the New York Stock Exchange, 462 locked-in trades for the equity trades (which are the component securities the specialists are assigned to), and one locked-in trade for the Mini-Basket. The trades involving specialists will be reported by NSCC as locked-in trades on T-contracts which are available on T+1. These trades will be identifiable as trades resulting from Basket Trades because the contra party will always be a unique omnibus account number.

The Mini-Basket will be reported on a separate section of the Basket Trade Detail Report (referred to in the original filing as the Basket Trade Settlement Detail Report) to the NSCC Member which is the Basket Book Dealer. The Mini-Basket trades will be processed, including netting of the Mini-Baskets, bursting of the component parts and assignment of the Basket Value Settlement Sum, and settled the same way regular Basket Trades are processed. (If a Basket Book Dealer also executes Basket Trades these will not be netted with the Mini-Baskets. However, the component securities of the Mini-Baskets will be netted with components of regular Basket Trades and other Regular Way or Balance Order securities for settlement.)

In its filing NSCC also stated that certain operational features of Basket Trading would possibly not be ready when the New York Stock Exchange implemented Basket Trading. NSCC will, by implementation date, have developed the operational features referred to in the filing. Specifically, NSCC will net Basket Trades prior to separating them into the component securities. The Trade Summaries will separately indicate securities to be received or delivered from Basket Trading. In addition, the Basket Value Settlement Sum (cash adjustment) will be separately set forth on the Members' Settlement Statements and not included with the clearance cash adjustment for Balance Orders. Lastly, NSCC will issue all applicable reports in printed form and the Basket Trade Detail Report in machine readable output and print image output.

NSCC will charge $30.00 to the buyer and seller per Basket Trade received and $10.00 to the Basket Book Dealer per Mini-Basket received. These fees are in addition to the trade recording fees currently charged by NSCC which will be applied to the individual stock components after netting.

(2) Since the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, and provides for the equitable allocation of charges among Members, it is consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason 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 approved.

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 that are filed with 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 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 any copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file No. NSCC-89-06 and should be submitted [October 4, 1989].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-21440 Filed 9-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27223; File No. SR-PSE-89-21]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Narrowing of Certain Options Bid/Ask Differentials

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 15, 1989, the Pacific Stock Exchange Incorporated ("PSE") or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule VI, Section 79, to allow for a maximum differential of ¼ of $1 between the bid and the offer for each option contract for which the bid is less than $2, and to provide that the maximum bid/ask differential for in-the-money options series may be identical to the bid-ask spread in the underlying security market when the spreads in such market are wider than those allowed by section 79. (Brackets indicate langauge to be deleted, italics indicate new language.)

Obligations of Market Makers

Sec. 79:

(a) No change.

(b) No change.

(1) Bidding and/or offering so as to create differences of no more than ¼ of $1 between the bid and the offer for each option contract for which the bid is [$1 or less] *less than $2*, no more than ⅜ of $1 where the bid is [more than $1] *$2 or more* but does not exceed $5, no more than ½ of $1 where the bid is more than $5 but does not exceed $10, no more than ¾ of $1 where the bid is more than $10 but does not exceed $20, and no more than $1 when the last bid is $20⅛ or more, proided that the Options Floor Trading Committee may establish differences other than the above for one or more series or clases of options. *In the event the bid/ask differential in the underlying security is greater than the bid/ask differential set forth herein, the permissible price differential for any in-the-money option series may be identical to those in the underlying security market.*

(b)(2) and (b)(3) No change.

(c) through (d)(3) No change.

Commentary:

.01 through .07 No change.

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 proposed rule change involves the tightening of markets for option series in which the bid is less than $2, such that the maximum bid/offer differential may not exceed ¼ of $1. Currently, the maximum differential is ¼ of $1 for option contracts for which the bid is $1 or less, and ⅜ of $1 for option contracts for which the bid is more than $1 but does not exceed $5. The maximum differential would remain ⅜ of $1 for option contracts in which the bid is $2 or more, but does not exceed $5.

The Exchange believes that the narrowed spreads resulting from this rule change will provide improved price continuity and tighter, more liquid markets to a significant number of public investors. All orders, including public customer orders, will benefit from the narrower bid/ask differentials.

The proposed amendment further provides that in connection with in-the-money series in which the quote differential in the underlying security is greater than the bid/ask differentials specified in Rule IV, section 79, the permissible differential for the respective option series may be identical to those in the underlying security.

These changes are being proposed to effect conformity with rules of the other option exchanges and thus avoid member and investor confusion.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and in particular, section 6(b)(5), as it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market.

(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

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 appropriated 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 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 October 4, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: September 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-21493 Filed 9-12-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 1130]

Laredo, TX.; Application for Bridge Permit

Notice is hereby given that the Department of State has received an application for a permit authorizing construction of a bridge across the Rio Grande River from Laredo, Texas to Colombia, Nuevo Leon, Mexico.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, and the International Bridge Act of 1972 (Pub. L. 92-434, 86 Stat. 731, 33 U.S.C. 535 approved September 26, 1972).

As required by E.O. 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding the application in writing by October 13, 1989 to Mr. Kenneth R. Propp, Office of Legal Adviser, Economic, Business and Communications Affairs, Room 6420, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection and copying in the Office of the Assistant Legal Adviser for Economic, Business and Communications Affairs during normal business hours.

Any questions relating to this notice may be addressed to Mr. Propp at the above address (202) (647-7770).

Dated: August 31, 1989.

Ted A. Borek,

Assistant Legal Adviser, Economic, Business and Communications Affairs.

[FR Doc. 89-21522 Filed 9-12-89; 8:45 am]

BILLING CODE 4710-08-M

[1] 17 CFR 200.30-3(a)(12) (1986).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Monterey County, CA

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepard for a proposed highway project in Monterey County, California.

FOR FURTHER INFORMATION CONTACT: John R. Schultz, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: 551-1307.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the California Department of Transportation (CALTRANS) will prepare an environmental impact statement (EIS) on a proposal to improve the segment of Route 1 between Castroville and the Santa Cruz County line in Monterey County to relieve congestion and improve safety. Four alternative concepts have been identified.

Alternative 1: Expressway along Existing Alignment

Alternative 1 would involve widening the existing two-lane highway to a four-lane divided expressway with interchanges at Merritt Street and Salinas Road and access from local roads at intermediate points along the route.

Alternative 2: Expressway with Adjusted Horizontal Alignment to Minimize Wetland Impacts

Alternative 2 is identical to Alternative 1 except for an adjustment in the horizontal alignment of the roadway widening to minimize wetland impacts in the vicinity of Struve Pond and Bennett Slough.

Alternative 3: Expressway with Realignment to Avoid Wetland Impacts

Alternative 3 is also identical to Alternative 1 except for a one-mile segment where the road would be routed around the northwest side of Struve Pond to avoid wetland impacts in the vicinity of Struve Pond and Bennett Slough.

Alternative 4: "No-Build" Alternative

Alternative 4 is basically a "no-action" option; however limited operational and safety improvements could be made including shoulder widening, passing land additions, and intersection improvements.

Public information meetings will be held at several points during the study process. A public environmental study scoping meeting is planned for September 21, 1989 at 7:00 p.m. at North Monterey County High School, 13990 Castroville Boulevard in Castroville.

"Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)"

Issued on September 7, 1989.

John R. Schultz,

District Engineer, Sacramento, California.

[FR Doc. 89-21490 Filed 9-12-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Safety Administration

Rulemaking, Research and Enforcement Programs and Air Bag Related Issues of Automatic Occupant Protection Requirements; Meetings

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of meetings.

SUMMARY: This notice announces a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

This notice also announces the second meeting to be held on the implementation of the automatic occupant protection requirements of Standard No. 208, *Occupant Protection.* This meeting will focus on air bag related issues.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research and enforcement

programs will be held on October 16, 1989, beginning at 3:00 p.m. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing by October 9, 1989. If sufficient time is available, questions received after the October 9, 1989 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by October 9, 1989, and the issues to be discussed, will be mailed to interested persons by October 11, 1989. This list will also be available at the meeting.

The meeting on the implementation of the automatic occupant protection requirements of Standard No. 208, focusing on air bag related issues, will be held on October 17, 1989, beginning to 10:30 a.m. Anyone interested in making a presentation at the October 17, meeting must submit a request in writing to Mary Coyle, NHTSA, NRD–01, 400 Seventh Street SW., Room 6206, Washington, DC 20590, by September 29, 1989. The agenda for the October 17, meeting will be available by October 12.

ADDRESS: Both meetings will be held in the Conference Room of the Environmental Protection agency's Laboratory Facility, 2565 Plymouth Road, ann Arbor, Michigan.

FOR FURTHER INFORMATION CONTACT: Questions for the October 16, meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking. Room 5401, 400 Seventh Street SW., Washington, DC 20590.

Questions on, or requests to make presentations at, the October 17, meeting on air bag related issues should be directed to Ms. Mary Coyle, NHTSA, 400 Seventh Street SW., Room 6206, Washington, DC 20590, telephone (202) 366–1537.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on October 16, 1989. The meeting will begin at 3:00 p.m., and will be held in the Conference Room of the Environmental protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590. Room 5108, 400 Seventh Street SW., Washington, DC 20590.

On July 13, 1989, the agency held a meeting on issues regarding automatic safety belts. The agency now wishes to announce the second meeting to be held on the implementation of the automatic occupant protection requirements of Standard No. 208. This meeting will begin at 10:30 a.m., on October 17, 1989, at the Environmental Protection Agency Facility in Ann Arbor, Michigan. The purpose of this meeting is to discuss air bag-related issues, including their safety effectiveness, reliability, belt usage with air bags, threshold deployment strategies, sensor strategies, bag design (tethered, folded, type of material, venting, etc.), belt pretensioner use, data collection protocols, and consumer acceptance issues. Presentations by agency staff will be made at this meeting. Anyone desiring to make a presentation at the October 17, meeting should contact May Coyle, NHTSA, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–1537 by September 29, 1989. A transcript of this meeting will also be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page upon request to NHTSA Technical Reference section, Room 5108, 400 Seventh Street SW., Washington, DC 20590.

Issued on September 7, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–21437 Filed 9–12–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1989 Rev., Supp. No. 3]

Surety Companies Acceptable on Federal Bonds

Covenant Mutual Insurance Company

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1989 Revision, on page 27807 to reflect this addition:

Covenant Mutual Insurance Company. *Business Address:* 241 Main Street, Hartford, CT 06106–1862. *Underwriting Limitation* [b]: *$3,166,000. Surety Licenses* [c]: AL, AZ, CA, CO, CT, DE, FL, GA, ID, IL, IN, ME, MD, MA, MS, MO, NV, NH, NJ, NY, OH, OK, PA, TX, VT and WA. *Incorporated In:* Connecticut.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasure Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287–3921.

Dated: September 1, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial management Service.

[FR Doc. 89–21476 Filed 9–12–89; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an

indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: September 6, 1989.

By direction of the Secretary.

David N. Stone,

Executive Assistant, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration
2. Veterans' Job Training Act
3. VA Forms 22–8929, 22–8930, 22–8931, 22–8932
4. These four forms are used to administer the Veterans' Job Training Program created by Public Law 98–77: (1) Certification of Training; (2) Notice of Intent to Employ a Veteran; (3) Employer's Application for Approval of Job Training Program; and (4) Application for Certificate of Eligibility.
5. On occasion, monthly, quarterly
6. Individuals or households, State or local governments, businesses or other for-profit, non-proft institutions, small businesses or organizations
7. 105,000 responses
8. .555 hour
9. Not applicable

[FR Doc. 89–21472 Filed 9–12–89; 8:45 am]

BILLING CODE 8320–01–M

Wage Committee; Notice of Meetings

The Department of Veterans Affairs (VA) in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Thursday, October 5, 1989, at 2:00 p.m.
Thursday, October 19, 1989, at 2:00 p.m.
Thursday, November 2, 1989, at 2:00 p.m.
Thursday, November 16, 1989, at 2:00 p.m.
Thursday, November 30, 1989, at 2:00 p.m.
Thursday, December 14, 1989, at 2:00 p.m.
Thursday, December 28, 1989, at 2:00 p.m.

The meetings will be held in Room 300, Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1175, 810 Vermont Avenue N.W., Washington, DC 20420.

Dated: September 5, 1989.

By Direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89–21473 Filed 9–12–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 176
Wednesday, September 13, 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).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 7, 1989.

TIME AND DATE: 10:00 a.m., Thursday, September 14, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Consolidation Coal Company*, Docket No. WEVA 88-176. (Issues include whether the administrative law judge erred in concluding that the operator violated 30 CFR 50.10, dealing with the immediate contact of MSHA concerning reportable accidents.)

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)]

MATTERS TO BE CONSIDERED:

2. *Robert Simpson v. Kenta Energy, Inc.*, Docket No. KENT 83-155-D. (Consideration of a Motion to Remand).
3. *Ronald Tolbert v. Chaney Creek Coal Corporation*, Docket No. KENT 86-123-D. (Consideration of Motion to Reopen and Remand).

It was determined by a unanimous vote of Commissioners that this portion of the meeting be closed.

Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 800-877-8339 for Toll Free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 89-21575 Filed 9-8-89; 4:30 pm]
BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, September 18, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve Systems employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 8, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-21576 Filed 9-8-89; 4:31 pm]
BILLING CODE 6210-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 2-89
Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thurs., September 28, 1989, at 10:00 a.m.

SUBJECT MATTER: Consideration of Supplemental Proposed decisions on claims against Egypt.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street NW., Room 400, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, DC, on September 11, 1989.

Judith H. Lock,
Administrative Officer.

[FR Doc. 89-21659 Filed 9-11-89; 2:19 pm]
BILLING CODE 4410-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 9:30 a.m. (closed portion), 11:00 a.m. (open portion), Tuesday, September 26, 1989.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street NW., Washington, DC.

STATUS: The first part of the meeting from 9:30 a.m. to 11:00 a.m. will be closed to the public. The open portion of the meeting will commence at 11:00 a.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 9:30 a.m. to 11:00 a.m.):

1. President's Report
2. Finance Project in West Asian Country
3. Finance Project in Central American Country
4. Finance Project in South American Country
5. Insurance Project in Oceanian Country
6. Claims Report
7. Report on Conversion Funds

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 11:00 a.m.)

1. Approval of Minutes of Previous Meeting
2. Treasurer's Report
3. Scheduling Dates for Future Meetings
4. Information Reports

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation on (202) 457-7079.

Dated: September 11, 1989.

Margaret A. Kole,
OPIC Corporate Secretary.

[FR Doc. 89-21612 Filed 9-11-89; 11:21 am]
BILLING CODE 3210-01-M

federal register

Wednesday
September 13, 1989

Part II

Department of Health and Human Services

Office of Child Support Enforcement

45 CFR Parts 302, 303, and 304

Child Support Enforcement Program: $50 Pass-through; Mandatory Support Guidelines; Mandatory Genetic Testing; Paternity Establishment; Laboratory Testing; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 302, 303, and 304

RIN 0970-AA64

Child Support Enforcement Program: $50 Pass-Through; Mandatory Support Guidelines; Mandatory Genetic Testing; Paternity Establishment; Laboratory Testing

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed rules would implement five provisions of the Family Support Act of 1988 (Pub. L. 100–485) signed by the President October 13, 1988, which amend title IV–D of the Social Security Act (the Act), the authority for the child support enforcement program. The provisions amend the Act to require payment to the family and disregard for purposes of eligibility for Aid to Families with Dependent Children (AFDC), the first $50 of child support payments for each month which were made in the month when due; to require that State guidelines be used as a rebuttable presumption of support levels; to require the child and all other parties in a contested paternity case to submit to genetic testing upon request; to specify that the requirement for a State law permitting paternity establishment up to a child's eighteenth birthday also applies to any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years; and to provide 90 percent Federal matching for laboratory costs incurred in determining paternity.

DATES: Consideration will be given to comments received by November 13, 1989. It should be noted that the statutory effective dates of certain statutory provisions occur before the end of the comment period on these proposed rules. The statutory provisions are effective as prescribed in the statute regardless of the absence of final implementing regulations.

ADDRESS: Address comments to: Director, Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attention: Director, Policy and Planning Division. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., on the 4th floor of the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: Policy Branch, OCSE, specifically:

Andrew Hagan (202) 252–5375—$50 pass-through, 90% Federal matching for laboratory costs, and mandatory genetic testing

Craig Hathaway (202) 252–5367—Mandatory guidelines and paternity establishment until age 18.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the collection of information requirement at 45 CFR 302.56(g) is estimated to be a one-time burden of 20 hours to develop criteria to determine when application of guidelines would be inappropriate. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Child Support Enforcement, Family Support Administration, 370 L'Enfant Promenade SW., Washington, DC 20447; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. OMB has already approved the requirement for State notice to employers concerning wage withholding under 45 CFR 303.100(d) and the requirement for guidelines for setting support awards under 45 CFR 302.56 (OMB approval number 0970–0051).

Statutory Authority

These proposed rules are published under the authority of the following provisions of the Act, as amended by Public Law 100–485: Section 457(b)(1) (with respect to the $50 pass-through), section 467(b) (with respect to mandatory support guidelines), section 466(a)(5) (with respect to State laws and procedures requiring parties to submit to genetic testing and State law and procedures for establishment of paternity), and section 455(a)(1) (with respect to 90 percent matching for laboratory testing). The proposed rules are also published under the general authority of section 1102 of the Act, which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Background and Description of Regulatory Provisions

1. Pass-through of Child Support Payments

Section 2640 of the Deficit Reduction Act (Pub. L. 98–369) amended section 457(b)(1) of the Act to require States to pay the first $50 of such amounts collected periodically which represent the monthly support obligation to the AFDC family. The statute also amended section 402(a)(8)(A)(vi) of the Act to require States to disregard "the first $50 of any child support payments received in such month" when determining AFDC eligibility and the amount of the AFDC payment. These changes resulted in AFDC families having up to $50 of additional disposable income each month.

Section 102 of Public Law 100-485 amends sections 402(a)(8)(A)(vi) and 457(b)(1) of the Act, effective January 1, 1989, to clarify that the first $50 of support payments received in a month which was due for a prior month must be paid to the family if paid by the absent parent in the month when due. Under the new law, the AFDC family may not be denied the $50 payment when the absent parent pays support on-time but there is a delay in transmitting the payment from the point of collection to the agency responsible for distribution.

This is consistent with regulations at 45 CFR 302.51(a) (final regulations published on June 9, 1988 (53 FR 21642)), which provide that the date of collection of a child support payment for purposes of distribution is the date on which payment is received by the State IV–D agency or by the legal entity of any State or political subdivision actually making the collection, whichever is earliest. We are expanding the date of collection rule however, with respect to payments made through wage or other income withholding for the reasons noted below.

Public Law 100-485 also made significant changes in the Act affecting requirements for income withholding. Immediate income withholding is required in child support orders issued or modified on or after November 1, 1990, and other changes were made which will ensure that income withholding applies in a majority of cases in the future. (The changes to the Act as a result of Pub. L. 100–485 not addressed in this document will be regulated separately.)

From the inclusion in Public Law 100-485 of the amendments concerning the $50 pass-through, and the amendments which will result in payment of child support through income withholding in the vast majority of cases, we conclude that the Congress' intent was to apply the $50 pass-through, after January 1, 1989, as of the date of withholding. Therefore, in any case in which an absent parent's child support payment is irrevocably withheld from his or her wages or other income in the month in

which the payment was due, even where the IV–D agency does not receive the payment until a later month (because the absent parent's employer or other entity withholding income did not promptly forward to the IV–D agency the support withheld), the date of collection, for distribution purposes, will be the date of the withholding. If the State's withholding law includes withholding of other income such as unemployment compensation or pension benefits, the date of collection would be the date of the withholding. In order to implement this statutory requirement, a regulatory amendment is needed to treat the date of witholding from wages or other income as the date of collection for distribution purposes. Amendments are also needed to clarify the applicability of § 302.51(a) and to ensure reporting by employers of the date of wage withholding and appropriate information exchange in interstate cases, as follows:

Section 302.51—Distribution of Support Collections

Section 302.51(a) requires support collected to be treated first as current support for the month in which it was collected and excess amounts to be applied to arrearages. It also defines the date of collection for distribution purposes, effective June 9, 1988, as the date on which payment is received by the IV–D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest. Finally, § 302.51(a) requires that, in any case in which collections are received by an entity other than the agency responsible for final distribution, the entity must transmit the collection within 10 days of receipt.

There appears to be some misunderstanding about whether § 302.51(a) applies for distribution purposes in all IV–D cases and, specifically, whether the definition of the date of collection, which determines how amounts collected must be distributed, must be used in determining the appropriate distribution in all IV–D cases, e.g., AFDC and non-AFDC cases, intra- and interstate cases. In addition, some States have asked if the clarification in Public Law 100–485 with respect to payment of the $50 pass-through when payments are made in the month when due applies only to the $50 payment or to distribution of all collections in IV–D cases under § 302.51.

In response to these concerns, accurate distribution in IV–D cases depends on the date of collection. Therefore, when payments which were made in the month when due are received in a later month by the IV–D agency responsible for final distribution, that agency must recompute distribution of all collections for the month in which payments were made on-time, not just the $50 payment.

In response to these concerns, we are revising § 302.51(a) to clarify under the proposed first sentence that, for purposes of distribution in all IV–D cases, amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amounts, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months.

For purposes of distribution and redetermining eligibility in AFDC cases, States are required, in OCSE–AT–76–5 (March 11, 1976), to convert to a monthly amount support that is ordered to be paid more frequently than monthly. The proposed second sentence in § 302.51(a) would indicate that, in AFDC cases in which conversion to a monthly amount is necessary, the IV–D agency may round down the converted amount to the next lower whole dollar amount for the purpose of distribution under § 302.51. This is consistent with the method for determining the amount of the assistance payment in 45 CFR 233.20(a)(2)(iv). Conversion is not necessary in other IV–D cases.

We propose to clarify that the third sentence of § 302.51(a) applies in all IV–D cases and to address the date of collection when payments are made through wage or income withholding. Therefore, the third sentence of 45 CFR 302.51(a) would define the date of collection for distribution purposes, effective June 9, 1988, for all IV–D collections, other than those payments made through wage or other income withholding, as the date on which the payment is received by the IV–D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest. Under a new fourth sentence, with respect to payments made through wage or other income withholding and received by the IV–D agency on or after January 1, 1989, the date of collection for distribution purposes would be the date the wages or other income are withheld to meet the support obligation. The last sentence of 45 CFR 302.51(a) would continue to indicate, until the effective date of distribution timeframes regulations published in response to the Family Support Act of 1988, that in any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collection within 10 days of receipt.

Section 303.7—Provision of Services in Interstate IV–D Cases

We propose to amend the regulation governing provision of services in interstate IV–D cases (which was published as a final rule on February 22, 1988 (53 FR 5246) and amended June 9, 1988 (53 FR 21642)) to require under § 303.7(c)(7)(iv) the responding State IV–D agency to forward support payments to the location specified by the initiating State IV–D agency no later than 15 calendar days from the date of *initial* receipt in the responding State. This will clarify that payments must be forwarded to the initiating State timely and will eliminate delays when each entity through which a collection must be sent holds the collection for no legitimate reason. We would point out that this does not include, in wage withholding cases, the time between when the wages are withheld and when they are sent by the employer to the State. The 15-day clock starts running only upon receipt by a legal entity of the State. In addition, paragraph (c)(7)(iv) will be revised to require the responding State IV–D agency to inform the initiating State IV–D agency of the date of collection as defined under § 302.51(a).

Section 303.100—Procedures for Wage or Income Withholding

We propose to amend § 303.100 by revising paragraph (d)(1)(ii) to require that the IV–D agency's notice to employers concerning wage withholding state that employers must report to the IV–D agency, or such other individual or entity as the State may direct, at the time they forward support withheld from wages or other income, the date such amounts were withheld from the absent parent's wages.

2. State Guidelines for Child Support Award Amounts

Section 18 of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) amended title IV–D of the Act to add Section 467 requiring each State, as a condition of State IV–D plan approval, to establish guidelines for child support award amounts within the State. The State must make the guidelines available to all judges and other officials who have the power to determine awards, but the guidelines need not be binding on them.

Section 103 of Public Law 100–485 amends section 467 of the Act to delete the clause that the State guidelines need

not be binding upon judges or other officials and to require that the State's guidelines be used to create a rebuttable presumption in any judicial or administrative proceeding for the award of child support that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. The statute further provides that a written finding or specific finding on the record that application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case. The State must review the guidelines at least every four years to ensure that their application results in the determination of appropriate child support award amounts.

In response to the Child Support Enforcement Amendments of 1984, a number of States implemented mandatory guidelines rather than the advisory guidelines required under the statute. Therefore, some States may already be in compliance with the requirement in Public Law 100–485. However, the concern has been raised that some States may have implemented procedures for using guidelines which are more restrictive than the new requirements. For example, procedures requiring that guidelines be followed in setting all support awards without the possibility of rebuttal appear not to comply with the requirements of the new law. We advise States in this position that changes to their guidelines and accompanying procedures will be necessary to conform to the requirements of Public Law 100–485 unless Congress clarifies an intent to the contrary.

We propose to make the following regulatory changes in response to the requirements under section 103 of Public Law 100–485 outlined above:

Section 302.50—Support Obligations

Under current regulations at § 302.50(b)(2), when there is no court order for support, States are required to establish a support obligation, in an amount determined in writing by the IV–D agency in accordance with a formula which meets criteria prescribed under § 302.53. We propose to replace the reference to the formula and the criteria under § 302.53 with reference to § 302.56, Guidelines for setting child support awards. Since guidelines will eliminate the need for such a formula, this is a technical change to conform the requirements for establishing support obligations with the proposed requirement mandating the use of guidelines in setting support amounts.

Section 302.53—Formula for Determining the Amount of the Obligation

Under current regulations at § 302.53, for cases without court orders for support, States must utilize a formula in setting support amounts which takes into consideration a number of criteria. The formula must be designed to ensure that the child benefits from the income and resources of the absent parent on an equitable basis with other minor children of the parent and must be utilized to determine the required monthly obligation, any arrearages and the amount to be paid periodically against any existing arrearages.

We are proposing to delete § 302.53 in its entirety effective October 13, 1989, to conform to the new requirement mandating the use of child support guidelines in setting all support awards. Because guidelines under § 302.56 must be used, effective October 13, 1989, in any proceeding, judicial or administrative, for the award of support, it is no longer necessary to have a separate formula for setting child support orders administratively. All decision makers will be responsible for using the State's guidelines as a rebuttable presumption of support levels in setting child support award amounts.

Section 302.56—Guidelines for Setting Child Support Awards

The Conference Report (Report 100–98) states that judges and other officials must use the "State's guidelines, uniformly applied, as a rebuttable presumption." Therefore, there must be one set of guidelines developed by the State and uniformly applied as a rebuttable presumption in setting all child support awards.

Paragraph (a) of 45 CFR 302.56 requires each State, effective October 1, 1987, to establish guidelines by law or by judicial or administrative action for setting child support award amounts within the State. This paragraph remains unchanged under this proposed rule. Paragraph (b) of this section requires the State to have procedures for making guidelines available to decision makers for advisory purposes. We propose to delete reference in paragraph (b) to the fact that guidelines need not be binding on decision makers because Public Law 100–485 requires that, effective October 13, 1989, guidelines be used by all decision makers as a rebuttable presumption of support levels.

We propose to revise paragraph (c) to require that at a minimum the guidelines established under paragraph (a): (1) Take into consideration all earnings, income and resources of the absent parent; (2) be based on specific descriptive and numeric criteria and result in a computation of the support obligation (this is required under current paragraph (c)); (3) provide for coverage of the child or children's health care needs and include health insurance when available to either parent at reasonable cost as defined in § 306.51(a); and (4) apply to all child support orders issued in the State.

Recent studies estimated that there are up to 1.4 million children with no health coverage who could have received it had absent parents been instructed to include the children on available employment-based health coverage. Medical care for children without health coverage is a concern of the President. Including health coverage in State guidelines is an important step toward helping these children receive private health coverage.

Children's health coverage can be included in support orders in several ways. Either the absent parent or the custodial parent can cover children with their employment-based or other reasonably priced group coverage. If only one parent has access to employment-based coverage which would include the children, the other parent may be deemed responsible for an appropriate share of the premiums and unreimbursed health care expenses. When neither party has access to reasonably priced private group health coverage, support orders might specify the parents' liability for health care costs incurred and include a triggering mechanism requiring coverage should it become available.

In a substantial subset of cases, employment-based or other reasonably priced group coverage that could cover the children is available to one parent, but not to the other. In such cases, guidelines would require that coverage will be awarded to the children when available to either parent at reasonable cost. We are evaluating what additional steps would help children receive health coverage under either parents' plans and policies, and welcome suggestions.

We believe that inclusion of these basic elements are essential to developing reasonable, responsible support guidelines. However, we have chosen not to prescribe to States more specific requirements at this time. We believe States are generally in a better position to determine specific considerations for families residing in their jurisdictions. We will closely monitor State guidelines and their application to assure that children's

support is met adequately and equitably. If not, more specific requirements may become appropriate.

Paragraph (d) continues to require States to include a copy of the guidelines in the State plan. A new paragraph (e) would be added to require that each State review its guidelines at least once every four years to ensure that their application results in the determination of appropriate child support award amounts, as required in section 103(b) of Public Law 100–485. Congress included this requirement to ensure that guidelines continue to remain equitable over time. A four-year cycle for review will protect the needs of the children for whom support is ordered, guarantee the validity of the guidelines and provide States the opportunity to update the guidelines to meet changing economic and social conditions.

Proposed paragraph (f) would require States, effective October 13, 1989, to provide that there will be a rebuttal presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) is the correct amount, as required under section 103(a)(3) of Public Law 100–485.

Also in accordance with section 103(a)(3) of the new law, we propose under paragraph (g), to stipulate that only a written finding on the record of a proceeding for the award of child support that the use of the guidelines would be inappropriate in a particular case shall be sufficient to rebut the presumption in that case. Such finding must be predicated on criteria established by the State. While development of the specific criteria for rebuttal is being left to each State's discretion, we are proposing under this paragraph that the State's criteria must be based on the best interests of the child. We believe that in any proceeding regarding child support, the interests of the child should prevail and determinations not to use the guidelines in a particular case should be the exception rather than the rule. We also propose that written findings that rebut State guidelines clearly state the nature and extent of the variation from the guidelines. In cases where items of value are conveyed in lieu of a portion of the support presumed under the guidelines, that value should be noted. This information will be useful in cases where support orders are appealed and in States' evaluation of the effectiveness of their guidelines.

We are concerned that States construct guidelines in such a way as to reasonably limit the number of cases in which the guidelines are rebutted. States should gather data on what proportion of orders are being issued under guidelines and the reasons for rebuttal where the guidelines are not applied. The data should be analyzed by the State in conducting a review of those guidelines and the State should enhance the guidelines as necessary where they find that a disproportionate number of orders have been established in which the guidelines are rebutted. Therefore, in paragraph (h), we are proposing that States should gather such data and use this information to make any revisions as part of their initial review of their guidelines. Data collection should start as soon as possible to assist in any reviews conducted before the statutorily required date in 1993. We plan to publish draft audit regulations for guidelines and other parts of the program within the next six months.

3. State Laws Providing for Paternity Establishment

Section 466(a)(5) of the Act, added by the Child Support Enforcement Amendments of 1984, Public Law 98–378, requires that States have in effect laws requiring the use of procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday. The implementing regulation at 45 CFR 302.70(a)(5) requires, effective October 1, 1985, that the State plan provide that the State has in effect such a law and has implemented such procedures.

Section 111(b) of Public Law 100–485 amends section 466(a)(5) of the Act by redesignating the above requirement as section 466(a)(5)(A) and adding a new requirement under paragraph (B) to require each State to have in effect laws requiring the use of procedures under which the State is required (except in cases where the individual involved has been found under section 402(a)(26)(B) of the Act to have good cause for refusing to cooperate) to require the child and all other parties in a contested paternity case to submit to genetic tests upon the request of any party, effective November 1, 1989. Further, paragraph (c) of section 111 of Public Law 100–485 amends section 454(6) of the Act to allow States to impose a fee for performing genetic tests on any individual who is not an AFDC recipient. We strongly encourage the charging of fees for genetic tests in order to discourage frivolous requests for testing.

In addition, section 111(e) of Public Law 100–485 amends section 466(a)(5)(A) of the Act (as amended by section 111(b)), retroactive to August 16, 1984 (the effective date of Public Law 98–378), to provide that the State law requirement permitting the establishment of paternity of any child prior to the child's 18th birthday, also applies to any child for whom paternity has not yet been established and any child for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

To address these statutory changes we are proposing the following regulatory amendments:

Section 302.70—Required State Laws

We propose to amend 45 CFR 302.70 to reiterate the statutory changes outlined above by revising the introductory language in paragraph (a) regarding effective dates and by revising paragraph (a)(5) to redesignate the current contents as § 302.70(a)(5)(i) and to add at the end thereof "including for any child for whom paternity has not yet been established and any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years."

We propose to add a new § 302.70(a)(5)(ii) to require that, effective November 1, 1989, States have in effect laws providing for procedures under which the State is required, except in cases where good cause has been found, to require the child and all other parties in a contested paternity case to submit to genetic tests upon the request of any party.

Section 303.5—Establishment of Paternity

Regulations at § 303.5 set forth requirements States must adhere to in establishing paternity. We propose to amend § 303.5 by adding two new paragraphs to be designated as §§ 303.5(d) and (e).

Section 303.5(d) would require, upon the request of any party in a contested paternity case, that all parties submit to genetic testing, unless, in the case of an individual receiving AFDC, there has been a determination of good cause for refusal to cooperate under §§ 232.40 through 232.49. Genetic testing should be done promptly after the request is made, notwithstanding the age of the child in early months of infancy. Procedures currently exist which permit testing regardless of the child's age.

Proposed paragraph (e) would provide that the IV–D agency may charge any individual who is not receiving AFDC a reasonable fee for the costs of performing genetic tests. We strongly encourage States to charge fees for genetic tests in order to discourage

frivolous requests for testing. The development of a fee payment mechanism would also reduce the incidence of contested cases by reducing frivolous denials or accusations of paternity.

States electing to charge such fees may set a flat fee for genetic tests in an amount not exceeding the actual cost of performing such tests or may establish a fee schedule based on income. Such fees may be collected from non-AFDC custodial parents or from the absent parent if paternity is substantiated. States electing to charge such fees must ensure that the amount is reasonable so as not to discourage the application of non-AFDC families needing paternity establishment services. Paragraph (e) would also require that, if paternity is established due to genetic test results, the IV–D agency must attempt to obtain a judgment for the costs of the genetic tests from the putative father.

4. Increased Federal Financial Participation for Laboratory Testing to Determine Paternity

Section 112 of Public Law 100–485 amends section 455(a)(1) of the Act to provide 90 percent Federal matching for States' costs for laboratory testing to determine paternity. The amendment is effective with respect to laboratory costs incurred on or after October 1, 1988. Under prior law, these costs were matched at the applicable rate pursuant to section 455(e) of the Act (68 percent for FY 1988 and 1989).

Section 304.20—Availability and rate of Federal Financial Participation

We propose to amend § 304.20 by adding a new paragraph (d) to specify that 90 percent Federal matching is available for laboratory costs of paternity determination incurred on or after October 1, 1988. This matching rate would be available for laboratory costs incurred in determining paternity in a specific case, including, for example, the costs of obtaining and transporting blood and other samples of genetic material, repeated testing where necessary, analysis of test results, and the costs for expert witnesses in a paternity determination proceeding, when the expert witness costs are included as part of the genetic testing contract. We have decided to include costs for expert witnesses because we believe that such costs are usually included as part of genetic testing contracts and are necessary and reasonable costs for the State to incur in making paternity determinations. The same costs may be excluded, pursuant to section 456(c) of the Act and the implementing regulation at 45 CFR 303.52(b)(4)(iv), in determining a State's incentive payments.

The final regulation on standards for program operations, published on August 4, 1989, require that paternity testing laboratories be selected competitively. Consistent with current Federal requirements, Federal financial participation will be available only for reasonable and necessary costs; costs significantly above market rate are not reasonable. This requirement for competitive selection will also reduce coss to individuals in States that choose to charge fees to the requesting party.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we are required to prepare a regulatory flexibility analysis for those rules which would have a significant economic impact on a substantial number of small entities. While this regulation requires States to notify employers that they must indicate the date wages are withheld when forwarding wages to the State, this would not have a significant economic impact on employers because they are already required to comply with wage withholding requests, and supplying this date when forwarding withheld wages would not significantly increase the economic burden placed on them. Because the impact of these regulations is primarily on States, these regulations would not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not conatitute a "major" rule for the following reasons:

(1) The annual effect on the economy would be less than $100 million;

(2) This rule would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

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

List of Subjects

Parts 302 and 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 304

Child support, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

Approved: April 10, 1989.

Louis W. Sullivan,

Secretary.

For the reasons set out in the preamble, we propose to amend Title 45 Chapter III of the Code of Federal Regulations as follows:

PART 302—STATE PLAN REQUIREMENTS [AMENDED]

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2) 1396b(o), 1396b(p) and 1396(k).

2. Section 302.50(b)(2) is amended by replacing the words "a formula which meets the criteria prescribed in § 302.53" with the words "the requirements of § 302.56".

3. Section 302.51 is amended by revising paragraph (a) to read as follows:

§ 302.51 Distribution of support collections.

* * * * *

(a) For purposes of distribution in any IV–D case, amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months. In AFDC cases in which conversion to a monthly amount is necessary, the IV–D agency may round down the converted amount to the next lower whole dollar amount for the purpose of distribution under this section. Effective June 9, 1988, the date of collection for distribution purposes in all IV–D cases, except with respect to those collections addressed under the next sentence of this section, shall be the date on which the payment is received by the IV–D agency or the legal entity of any State or political subdivision actually making the collection, whichever is earliest. With respect to payments made through wage or other income withholding and received by the IV–D agency on or after January 1, 1989, the date of collection for

distribution purposes in all IV–D cases shall be the date the wages or other income are withheld to meet the support obligation. Until the effective date of regulations setting distribution timeframes in accordance with the Family Support Act of 1988, in any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collection within 10 days of receipt.

4. Section 302.53 is removed.

5. Section 302.56 is amended by revising paragraphs (b) and (c) and adding paragraphs (e), (f), (g), and (h) to read as follows:

§ 302.56. Guidelines for setting child support awards.

* * * * *

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

(c) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into consideration all earnings, income and resources of the absent parent;

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation;

(3) Provide for coverage of the child or children's health care needs and include health insurance when available to either parent at reasonable cost as defined in § 306.51(a); and

(4) Apply to all orders in the State.

(d) * * *

(e) The State must review the guidelines established under paragraph (a) of this section at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

(f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must be based on the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required, how the order varies from the guidelines, including the value of any property or other support awarded in lieu of support presumed by the guidelines, the justification of how the finding serves the best interests of the child, and, in cases where items of value are conveyed in lieu of a portion of the support presumed under the guidelines, the estimated value of items conveyed.

(h) As part of the initial review of a State's guidelines required under paragraph (e) of this section, a State must gather and analyze data regarding the number of cases in which guidelines have been applied, the number in which there has been a deviation from the guidelines, and the reasons for such deviation. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

6. Section 302.70(a) is amended by adding the clause "Unless otherwise indicated," at the beginning of the introductory text, and by revising paragraph (a)(5) to read as follows:

§ 302.70 Required State laws.

(a) * * *

(5)(i) Procedures for the establishment of paternity for any child at least to the child's 18th birthday, including any child for whom paterntiy has not yet been established and any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years; and

(ii) Effective November 1, 1989, procedures under which the State is required (except in cases where the individual involved has been found under §§ 232.40 through 232.49 of this title to have good cause for refusing to cooperate) to require the child and all other parties in a contested paternity case to submit to genetic tests upon the request of any such party, in accordance with §§ 330.5 (d) and (e) of this chapter.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

7. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

8. Section 303.5 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 303.5 Establishment of paternity.

* * * * *

(d) Upon the request of any party in a contested parternity ase, the IV–D agency shall require all parties to submit to genetic tests unless, in the case of an individual receiving aid under the State's title IV–A plan, there has been a determination of good cause for refusal to cooperate under §§ 232.40 through 232.49 of this title.

(e) The IV–D agency may charge any individual who is not a recipient of aid under the State's title IV–A plan a reasonable fee for the costs of performing genetic tests. If paternity is established as a result of genetic tests, the IV–D agency must attempt to obtain a judgment for the costs of the genetic tests from the putative father.

9. Section 303.7 is amended by revising paragraph (c)(7)(iv) to read as follows:

§ 303.7 Provision of services in interstate IV–D cases.

* * * * *

(c) * * *

(7) * * *

(iv) Collecting and monitoring any support payments from the absent parent and forwarding payments to the location specified by the IV–D agency in the initiating State no later than 15 calendar days from the date of initial receipt in the responding State, except with respect to certain Federal tax refund offset collections as specified in § 303.72(h)(5) of this part. The IV–D agency must include sufficient information to identify the case, indicate the date of collection as defined under § 302.51(a) of this title, and include the responding State's identifying code as defined in the Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards or the Worldwide Geographic Location Codes issued by the General Services Administration.

* * * * *

10. Section 303.100(d)(1)(ii) is amended by inserting the following words before the semicolon at the end:

§ 303.100 Procedures for wage or income withholding.

* * * * *

(d) * * *

(1) * * *

(ii) * * *, and must report to the State (or to such other individual or entity as the State may direct) the date on which the amount was withheld from the absent parent's wages;

* * * * *

PART 304—FEDERAL FINANCIAL PARTICIPATION

11. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

12. Section 304.20 is amended by adding a new paragraph (d), as follows:

§ 304.20 Availability and rate of Federal financial participation.

* * * * *

(d) Federal financial participation at the 90 percent rate is available for laboratory costs incurred in determining paternity on or after October 1, 1988, including the costs of obtaining and transporting blood and other samples of genetic material, repeated testing when necessary, analysis of test results, and the costs for expert witnesses in a paternity determination proceeding, but only if the expert witness costs are included as part of the genetic testing contact.

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Wednesday
September 13, 1989

Part III

Department of Education

34 CFR Parts 245, 246, 247, and 745
Women's Educational Equity Act Program; Rule and Notice Inviting Applications

DEPARTMENT OF EDUCATION

34 CFR Parts 245, 246, 247, and 745

RIN: 1810-AA16

Women's Educational Equity Act Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Women's Educational Equity Act (WEEA) Program. These regulations implement the changes mandated by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), include new regulations for projects of local significance, reflect program policy changes and effect other revisions based on a thorough review of the current regulations for the purpose of deregulation.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mrs. Alice T. Ford, Women's Educational Equity Act Program, 400 Maryland Avenue SW. (Room 2053, FOB-6), Washington, DC 20202-6439. (202) 732-4351.

SUPPLEMENTARY INFORMATION: The purpose of the Women's Educational Equity Act (WEEA) Program is to: (1) Provide equity for women—including girls—at all levels of education, (2) provide financial assistance to educational agencies and institutions in meeting all requirements of Title IX of the Education Amendments of 1972 (relating to nondiscrimination on the basis of sex in federally assisted educational programs), and (3) promote educational equity for women who suffer multiple discrimination, bias, or stereotyping based on sex and race, ethnic origin, disability, or age. Funds are provided through grants and contracts for projects of national, statewide, or general significance (referred to in this preamble as projects of general significance) that could be disseminated widely and replicated in a variety of settings. Projects of general significance include challenge grants, not to exceed $40,000 each, for projects to develop new dissemination and replication strategies and innovative approaches to achieving the purposes of the WEEA.

Funds may also be provided for projects of local significance, if the appropriation for the WEEA Program exceeds a statutorily specified amount. In that case, the Secretary has the option of using the excess funds for projects of general significance, projects of local significance, or both.

On January 30, 1989, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (54 FR 4742-4748). The NPRM included a discussion of the specific changes to be made by these regulations.

Changes include revisions to sections of the current regulations, based on a deregulation review, because the provisions were either not necessary to the administration of the program (i.e., § 745.5—equity in education) or they could be streamlined (i.e., § 745.4—the definition of educational equity for women). In addition, certain sections of these regulations were revised to focus on some current issues affecting educational equity for women and girls. For example, some of the priorities for general significance grants were deleted (§§ 745.26 and 745.27) and replaced with new priorities (§ 246.11) to highlight some areas of growing concern to women and girls: participating in mathematics, science, and computer science courses and in careers in which they are underrepresented; expanding opportunities for economically disadvantaged women; and ensuring that women remain in school or, if they drop out, resume their education.

Analysis of Comments and Responses

In response to the Secretary's invitation in the NPRM, fifty parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these regulations. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Some changes have been made in these regulations as a result of public comments. The following substantive changes have been made to these final regulations:

- The definition of educational equity for women in § 245.5 has been changed to clarify that eliminating institutional sex discrimination and inequitable educational policies and procedures is a part of the definition.
- Section 246.1 has been changed by eliminating the words "likely to" in describing the types of general significance grants that will be funded, to clarify that general significance projects must have nationwide or statewide significance.
- Section 246.32 has been revised to include the requirement that applicants demonstrate how their projects will address, or can be adapted to address, the needs of racial and ethnic minority women, disabled women, and older women. In addition, the prefatory language in this section has been revised to clarify that all projects funded under Part 246 must be of general significance.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Executive Order.

Executive Order 12606

These regulations will have a positive impact on the family and are consistent with the requirements of Executive Order 12606—The Family. These regulations strengthen the authority and participation of parents in the education of their children. For example, the regulations specifically require that a local educational agency hold an open meeting regarding the contents of its application to give parents and the public in general an opportunity to testify or otherwise comment on the contents.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the responses to the proposed rules and on its own review,

the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 245, 246, 247, and 745

Education, Government contracts, Grant programs—education, Reporting and recordkeeping requirements, Sex discrimination.

Dated: September 6, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.083, Women's Educational Equity Act Program)

The Secretary amends Title 34 of the Code of Federal Regulations by redesignating Part 745 as Part 245, revising redesignated Part 245, and adding new Parts 246 and 247 to read as follows:

PART 245—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM—GENERAL PROVISIONS

Subpart A—General

Sec.

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

Subpart C—How Does One Apply for an Award?

Subpart D—What Conditions Must Be Met by a Recipient?

Authority: 20 U.S.C. 3041–3045, unless otherwise noted.

Subpart A—General

§ 245.1 What is the Women's Educational Equity Act Program?

(a) The Women's Educational Equity Act Program provides funds for projects designed to do one or more of the following:

(1) Promote educational equity for women in the United States.

(2) Promote educational equity for women who suffer multiple discrimination, bias, or stereotyping based on—

(i) Sex; and

(ii) Race, ethnic origin, disability, or age.

(3) Enable educational agencies and institutions to meet the requirements of Title IX of the Education Amendments of 1972 (relating to nondiscrimination on the basis of sex in federally assisted educational programs).

(b) Unless otherwise specified, as used in this part—and in 34 CFR Parts 246 and 247—the term "women" includes girls.

(c) The Secretary may provide funds under this program in the form of a grant or contract.

(Authority: 20 U.S.C. 3041(b), 3042(a))

§ 245.2 Who is eligible for an award?

The following are eligible to receive awards under the Women's Educational Equity Act Program:

(a) Public agencies, institutions, and organizations.

(b) Nonprofit private agencies, institutions, and organizations, including student and community groups.

(c) Individuals.

(Authority: 20 U.S.C. 3042(a))

§ 245.3 Are men and boys eligible to participate in projects and activities?

Nothing in this part or in 34 CFR Parts 246 or 247 prohibits men and boys from participating in any project or activity assisted under the Women's Educational Equity Act Program.

(Authority: 20 U.S.C. 3043(c))

§ 245.4 What regulations apply?

The following regulations apply to the Women's Educational Equity Act Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations); 34 CFR Part 75 (Direct Grant Programs); 34 CFR Part 77 (Definitions that Apply to Department Regulations); 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities); 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); 34 CFR Part 81 (General Education Provisions Act—Enforcement); and 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34.

(c) The regulations in 34 CFR Parts 246 and 247, as appropriate.

(d) The regulations in this Part 245.

(Authority: 20 U.S.C. 3041–3045)

§ 245.5 What definitions apply?

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Contract
EDGAR
Grant
Local educational agency
Nonprofit
Private
Project
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the Women's Educational Equity Act, as amended.

"Educational equity for women" means—

(1) The elimination of institutionalized barriers and inequitable educational policies and practices that prevent full and fair participation by women in educational programs and in American society generally; and

(2) The ability of women to choose freely among benefits and opportunities in educational institutions, programs and curricula, without limitations based on sex.

"Title IX" means Title IX of the Education Amendments of 1972 (Pub. L. 92–318).

(Authority: 20 U.S.C. 3041–3045)

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

§ 245.10 What kinds of projects may the Secretary fund?

(a) The Secretary provides Federal funds for projects of general significance (34 CFR Part 246).

(b) If funds appropriated for the Women's Educational Equity Act Program exceed an amount specified in 20 U.S.C. 3042(b), the Secretary may also

provide funds for projects of local significance (34 CFR Part 247).

(Authority: 20 U.S.C. 3042)

§ 245.11 What kinds of activities may the Secretary fund?

(a) The Secretary awards at least one grant or contract each fiscal year for the performance of each of the activities described in paragraph (c) of this section.

(b) The Secretary awards funds for demonstration, developmental, and dissemination activities designed to provide, advance, ensure, or achieve educational equity for women at all levels of education.

(c) Activities described in paragraph (b) of this section may include, but are not restricted to, the following:

(1) Development—if materials are commercially unavailable—and evaluation of curricula, textbooks, and other educational materials.

(2) Model training programs for educational personnel.

(3) Research and development projects.

(4) Guidance and counseling activities, including the development of nondiscriminatory tests.

(5)(i) Educational activities to increase opportunities for women, including continuing educational activities and programs for underemployed and unemployed adult women.

(ii) As used in paragraph (c)(5)(i) of this section, "adult" refers to women who—

(A) Have attained the age of 16; and

(B) Are no longer in school.

(6) Expansion and improvement of educational programs and activities for women in vocational education, career education, physical education, and educational administration.

(Authority: 20 U.S.C. 3042(a))

§ 245.12 How does the Secretary establish priorities?

(a) Each year, in a notice published in the Federal Register, the Secretary establishes separate priorities for projects of general significance and projects of local significance. The Secretary selects one or more priorities for each category of projects, from among the following:

(1) The priorities in § 246.11.

(2) The priorities in § 247.11.

(b)(1) Applicants may submit applications under one or more of the selected priorities. Applicants must identify in their applications the priorities under which they wish to compete.

(2) Applications under a priority compete against other applications under that priority for funds allocated to the priority.

(c)(1) An applicant may propose a project that is not under a priority, but is within the scope of the authorized activities described in § 245.11. These applications compete for funds not allocated to any priority.

(2) If an applicant fails to identify a priority, the application competes with other applications that are not under a selected priority.

(d)(1) Each year the Secretary may select one or more of the priorities established for general grants to apply to challenge grants.

(2) In any year that the Secretary establishes priorities for challenge grants, the procedures in paragraphs (a) through (c) of this section apply.

(Authority: 20 U.S.C. 3045)

Subpart C—How Does One Apply for an Award?

§ 245.20 How must a local educational agency satisfy the requirement for an open meeting certification?

An applicant that is a local educational agency shall—

(a) Give reasonable notice of the general public's opportunity to testify or otherwise comment at an open meeting regarding the subject matter of the application;

(b) Hold the open meeting;

(c) Consider comments obtained at the meeting in developing the final application; and

(d) Certify in the application submitted to the Secretary that the LEA has held an open meeting regarding the application, as required by this section.

(Authority: 20 U.S.C. 3386)

§ 245.21 What assurance must an application include?

In addition to meeting the other requirements in this part, and as appropriate, Parts 246 and 247, an application must include an assurance that the applicant, if selected for an award, would administer or supervise the project or activity for which the applicant seeks Federal financial assistance under the program.

(Authority: 20 U.S.C. 3043(a))

Subpart D—What Conditions Must Be Met by a Recipient?

§ 245.40 What costs are allowed?

In addition to the costs allowed in EDGAR, the Secretary allows project funds to be used for the following:

(a) The payment of stipends, travel costs, and child care to persons who participate in training under the project and to persons who participate in field-testing of materials and programs developed under the project if—

(1) Provision for these payments was included in the application;

(2) The applicant demonstrates to the Secretary's satisfaction that the payments are necessary to achieve the objectives of the project; and

(3) Participants who receive stipends are not otherwise paid for the time during which they participate in the training or testing.

(b) The costs of tuition and fees for participants in a training activity under the project if—

(1) Provision for these costs was included in the application; and

(2) The applicant demonstrates to the Secretary's satisfaction that payment of the costs is necessary to achieve the objectives of the project.

(Authority: 20 U.S.C. 3042(a))

§ 245.41 What cost principles apply to individuals?

The cost principles referenced in 34 CFR 80.22 (Allowable Costs) apply to an individual who receives a grant under this program, except that an individual may not use an indirect cost rate.

(Authority: 20 U.S.C. 3042(a))

PART 246—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM—PROJECTS OF GENERAL SIGNIFICANCE

Subpart A—General

Sec.

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

Authority: 20 U.S.C. 3041–3045, unless otherwise noted.

Subpart A—General

§ 246.1 What are projects of general significance under the Women's Educational Equity Act Program?

Under the Women's Educational Equity Act Program—Projects of General Significance, the Secretary provides Federal funds to projects—

(a) That address one or more purposes of the Act;

(b) That will—

(1) Have national or statewide significance; or

(2) Be of significance to women generally; and

(c) Whose potential impact is not confined to a local area.

(Authority: 20 U.S.C. 3042(a)(1))

§ 246.2 Who is eligible for an award?

(a) The types of entities listed in 34 CFR 245.2 are eligible to receive awards under the Women's Educational Equity Act Program—Projects of General Significance.

(b) In addition to the types of entities referred to in paragraph (a) of this section, a consortium of these entities is eligible to receive a challenge grant.

(Authority: 20 U.S.C. 3042(a); 3044(b))

§ 246.3 What regulations apply?

The following regulations apply to the Women's Educational Equity Act Program—Projects of General Significance:

(a) The regulations in 34 CFR Part 245.

(b) The regulations in this Part 246.

(Authority: 20 U.S.C. 3041–3045)

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

§ 246.10 What kinds of projects and activities may the Secretary fund?

Under the Women's Educational Equity Act Program—Projects of General Significance, the Secretary provides Federal funds for the following kinds of activities:

(a) *General grants or contracts.* The Secretary may provide assistance through a general grant or award a contract for one or more of the kinds of activities described or listed in 34 CFR 245.11.

(b)(1) *Challenge grants.* The Secretary may provide assistance through a challenge grant for projects designed to develop innovative approaches to achieving the purposes of the Act.

(2) These approaches may include, but are not restricted to the following:

(i) Comprehensive plans for implementation of equity programs at every educational level.

(ii) Innovative approaches to school-community partnerships.

(iii) New dissemination and replication strategies.

(Authority: 20 U.S.C. 3042, 3044(a))

§ 246.11 What priorities may the Secretary select?

In establishing priorities for funding each year according to 34 CFR 245.12, the Secretary may select one or more of the following:

(a) Projects to develop and test model programs and materials that could be used by local educational agencies and other entities in meeting the requirements of Title IX.

(b) Projects to develop new educational programs, training programs, counseling programs, or other programs, designed to increase the interest and participation of women in instructional courses in mathematics, science, and computer science.

(c) Projects to develop new educational programs, training programs, counseling programs, or other programs, or to expand existing model programs, designed to accomplish the following:

(1) Reduce the rate at which women drop out of formal education.

(2) Encourage women dropouts to resume their education.

(d) Projects to develop or expand guidance and counseling programs designed to increase the knowledge and awareness of women regarding opportunities in careers in which women have not significantly participated.

(e) Projects to develop new educational programs or expand existing model educational programs designed to enhance opportunities for educational achievement by economically disadvantaged women.

(f) Projects to develop new educational programs or expand existing model educational programs designed to enhance opportunities for educational achievement by women who suffer multiple discrimination on the basis of sex and race, ethnic origin, age, or disability.

(Authority: 20 U.S.C. 3045)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 246.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria in §§ 246.31 through 246.34.

(2) The Secretary awards up to 100 points for these criteria.

(b)(1) In the case of an application for a challenge grant under 34 CFR Part 246, the Secretary also applies the criterion in 34 CFR 246.35.

(2) The Secretary awards up to five additional points for this criterion.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 3045)

§ 246.31 Selection criterion: Need.

The Secretary determines the extent to which—

(a) The proposed project addresses a need or needs that—

(1) Are central to one or more of the purposes of the Act; (8 points) and

(2) Have magnitude and significance; (8 points) and

(b) The applicant has sufficient knowledge of other projects dealing with this need or these needs, and demonstrates convincingly that the proposed project would not duplicate the other projects. (4 points)

(Authority: 20 U.S.C. 3045)

§ 246.32 Selection criterion: Impact.

The Secretary determines the degree to which the project is of general significance, as evidenced by the extent to which—

(a) The objectives of the proposed project are realistic; (6 points)

(b) The strategy and activities proposed to implement the project are likely to accomplish the project's objectives; (6 points)

(c) The proposed project holds promise of making a substantial contribution toward attaining one or more of the purposes of the Act; (6 points) and

(d) The applicant demonstrates that the project will address or can be adapted to address the educational equity needs of racial and ethnic minority group women, disabled women and older women. (6 points)

(Authority: 20 U.S.C. 3043, 3045)

§ 246.33 Selection criterion: Plan of operation.

The Secretary determines the extent to which—

(a) The management plan proposed by the applicant—

(1) Is likely to be effective for implementing the proposed project and achieving the project's objectives; (10 points)

(2) Provides for adequate and appropriate allocation of resources; (5 points) and

(3) Contains realistic schedules; (5 points)

(b) The budget proposed by the applicant is adequate and provides for costs that are reasonable in relation to the objectives of the project; (10 points) and

(c) The policies and procedures provided by the applicant for evaluating the proposed project are likely to ensure adequate evaluation including, if appropriate, an evaluation or estimate of the potential for continued significance following completion of the grant period. (10 points)

(Authority: 20 U.S.C. 3043, 3045)

§ 246.34 Selection criterion: Qualifications of staff.

The Secretary determines the extent to which—

(a) The director of the proposed project has the qualifications and capability to conduct the project successfully; (5 points)

(b) The staff of the project has the qualifications and capability to implement and operate the project successfully; (5 points)

(c) The time to be spent on the project by the director and staff is sufficient to carry out the project activities. (3 points) and

(d) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions. (3 points)

(Authority: 20 U.S.C. 3045)

§ 246.35 Selection criterion: Innovative approach.

The Secretary determines the extent to which the proposed project uses a new or untried approach to achieving some aspect of educational equity for women.

(Authority: 20 U.S.C. 3044, 3045)

§ 246.36 What additional factors does the Secretary consider in selecting projects for funding?

(a) In addition to the criteria in §§ 246.31 through 246.34—and, if appropriate, the criterion in § 246.35—the Secretary, in selecting projects for funding, gives special consideration to—

(1) Applications submitted by applicants that have not received assistance under this part or Part C of Title IX of the Elementary and Secondary Education Act of 1965; and

(2) The geographical distribution of awards.

(b) The Secretary awards ten additional points to each project that is eligible for consideration under paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 3043(b); 3045)

PART 247—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM—PROJECTS OF LOCAL SIGNIFICANCE

Subpart A—General

Sec.

Subpart B—What Kinds of Activities May the Secretary Fund?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

Subpart E—What Conditions Must Be Met by a Recipient?

Authority: 20 U.S.C. 3041–3045, unless otherwise noted.

Subpart A—General

§ 247.1 What are projects of local significance under the Women's Educational Equity Act Program?

Under the Women's Educational Equity Act Program—Projects of Local Significance, the Secretary provides Federal funds to pay a portion of the costs of establishing and operating special programs and projects of local significance that provide equal opportunities for both sexes.

(Authority: 20 U.S.C. 3042(a)(2))

§ 247.2 Who is eligible for an award?

(a) The types of entities listed in 34 CFR 245.2 are eligible to receive awards under the Women's Educational Equity Act Program—Projects of Local Significance.

(b) Each year the Secretary allocates at least 75 percent of the funds available for these types of projects for awards to local educational agencies (LEAs).

(Authority: 20 U.S.C. 3042(a)(2))

§ 247.3 What regulations apply?

The following regulations apply to the Women's Educational Equity Act Program—Projects of Local Significance:

(a) The regulations in 34 CFR Part 245.

(b) The regulations in this Part 247.

(Authority: 20 U.S.C. 3041–3045)

Subpart B—What Kinds of Activities May the Secretary Fund?

§ 247.10 What kinds of activities may the Secretary fund?

Under the Women's Educational Equity Act Program—Projects of Local Significance, the Secretary provides Federal funds for the following kinds of activities:

(a) The kinds of activities described or listed in 34 CFR 245.11.

(b) Activities incident to achieving compliance with Title IX.

(c) Other special activities designed to achieve the purposes of the Act.

(Authority: 20 U.S.C. 3042(a)(2))

§ 247.11 What priorities may the Secretary select?

In establishing priorities for funding each year, according to 34 CFR 245.12, the Secretary may select one or more of the following:

(a) Projects to help LEAs and other educational agencies and institutions meet the requirements of Title IX.

(b) Projects to develop—if materials are commercially unavailable—and adapt to local needs, curricula, textbooks, and other educational materials that will promote educational equity.

(c) Projects to develop and implement training programs, counseling programs, or other programs designed to enhance the skills of women in mathematics, science, and computer science.

(d) Projects to develop and implement guidance and counseling programs designed to—

(1) Increase the knowledge and awareness of women regarding non-traditional career options and opportunities for women; and

(2) Provide information on educational and other requirements for women entering those careers.

(Authority: 20 U.S.C. 3045)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 247.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for Federal financial assistance for a project of local

significance on the basis of the criteria in §§ 247.31 through 247.37.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 3045)

§ 247.31 Selection criterion: Need.

The Secretary determines the extent to which—

(a) The proposed project addresses needs that are central to the purposes of the Act; (5 points) and

(b) The applicant documents that there are severe and significant needs to be addressed in the local community, agency, or institution to be served. (5 points)

(Authority: 20 U.S.C. 3045)

§ 247.32 Selection criterion: Impact.

The Secretary determines the extent to which—

(a) The project will help educational agencies or institutions meet the requirements of Title IX or otherwise provide educational equity in the local community, agency or institution to be served; (5 points) and

(b) The project will increase the knowledge and commitment of administration, faculty, staff, students, parents, and the public to the needs and issues addressed by the project. (5 points)

(Authority: 20 U.S.C. 3045)

§ 247.33 Selection criterion: Plan of operation.

The Secretary determines the extent to which—

(a) The project's objectives are clear and related to the needs identified in the application; (8 points)

(b) The applicant's strategies and activities are feasible and are likely to address the identified needs successfully; (8 points)

(c) The applicant has an effective management plan that ensures proper management and administration of the project, including realistic schedules and adequate allocation of resources and personnel to achieve each objective; (8 points) and

(d) The applicant demonstrates how it will provide equal access and treatment for eligible project participants who are members of groups that suffer multiple discrimination, bias, or stereotyping based on sex and race, ethnic origin, age, or disability. (8 points)

(Authority: 20 U.S.C. 3045)

§ 247.34 Selection criterion: Qualifications of staff.

The Secretary determines the extent to which—

(a) The project director and staff have the qualifications and the capability to conduct the project successfully; (10 points)

(b) The time to be spent on the project by the director and staff is sufficient to carry out project activities; (5 points) and

(c) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions. (5 points)

(Authority: 20 U.S.C. 3045)

§ 247.35 Selection criterion: Cooperation and commitment.

The Secretary determines the extent to which—

(a) There is involvement and cooperation in the planning and implementation of the project by appropriate community groups, such as parent-teacher groups, that could contribute to the project's success; (3 points)

(b) There is support for the project and commitment to the success of the project by the top administration of the applicant; (3 points)

(c) The project's activities and management of those activities will be centrally placed in the agency or institution and will be an integral part of the agency's or institution's ongoing activities; (3 points) and

(d) The applicant plans to incorporate the proposed project into the permanent policies and practices of the agency or institution following completion of the grant period. (3 points)

(Authority: 20 U.S.C. 3045)

§ 247.36 Selection criterion: Budget and cost effectiveness.

The Secretary determines the extent to which the budget for the project is adequate to support the project activities. (8 points)

(Authority: 20 U.S.C. 3045)

§ 247.37 Selection criterion: Evaluation.

The Secretary determines the extent to which—

(a) The policies and procedures provided by the applicant for evaluating the proposed project are likely to ensure adequate evaluation including, if appropriate, an evaluation or estimate of the potential for continued significance following completion of the grant period; (4 points) and

(b) The methods of evaluation, to the extent possible, are objective and produce data that are quantifiable. (4 points)

(Authority: 20 U.S.C. 3043, 3045)

§ 247.38 What is the maximum period of an award?

A project of local significance may receive Federal funds for a period that does not exceed two years.

(Authority: 20 U.S.C. 3042(a)(2))

Subpart E—What Conditions Must Be Met by a Recipient?

§ 247.40 What portion of the costs must a recipient contribute?

(a) If selected for funding under the Women's Educational Equity Act Program—Projects of Local Significance, an LEA shall contribute the following share of approved costs:

(1) In the first year of the project, 20 percent.

(2) In the second year of the project, if applicable, 40 percent.

(b) If selected for funding under the Women's Educational Equity Act Program—Projects of Local Significance, an entity other than an LEA shall contribute the following share of approved costs:

(1) In the first year of the project, 10 percent.

(2) In the second year of the project, if applicable, 20 percent.

(Authority: 20 U.S.C. 3042(a)(2)).

Note—This appendix will not be published in the Code of Federal Regulations.

Appendix—Analysis of Comments and Changes

Women's Educational Equity Act (WEEA) Program Regulations

General Comments

Comments: Numerous commenters expressed concern that the changes proposed in the NPRM were not required by the legislation reauthorizing the program, and that the proposed changes could undermine the intent of the WEEA program to end institutionalized sex discrimination, bias, and stereotyping. Some commenters also viewed the regulations as an attempt to move the program away from the statutory requirement that projects be of national, statewide, or general significance. One commenter felt that the NPRM had not adequately explained the substantive changes being made, that statutory requirements for the changes were not cited, and that therefore, the NPRM should be withdrawn.

Discussion: As explained in the preambles to the NPRM and these final regulations, the new regulations were developed as a result of a deregulation review and policy changes reflecting the changing needs of women, in addition to the amendments to the WEEA, made by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. For example, § 745.5 was deleted because it was not necessary for the administration of the WEEA program. Some of the priorities for general significance grants were deleted and replaced with new priorities to reflect the need to encourage women and girls to stay in school or resume their education, participate in mathematics, science and computer science courses, and move into careers in which women have been underrepresented; and the need to expand educational opportunities for economically disadvantaged women. In addition, the NPRM included proposed regulations for the program of local significance that was added to the WEEA by the 1984 amendments, but for which the Secretary had not yet published regulations. Proposed deletions from the current regulations and other proposed changes, *e.g.*, changes in the selection criteria and priorities for general significance grants, were not intended to undermine the purpose of the WEEA. On the contrary, the Secretary believes the regulations fully effectuate the purposes of the WEEA. Nevertheless, after reviewing the comments received, the Secretary has adopted some changes to ensure that the regulations clearly implement the requirements of the WEEA.

Changes: Specific changes made in these regulations are explained in the sections that follow.

Section 245.5 What definitions apply?

Comments: Many commenters said that the Secretary should not eliminate the definition of sex role stereotyping or revise the definition of educational equity for women. They felt that the revised definition of educational equity for women assumes that all sex discrimination and bias have been eliminated. Several commenters stated that the proposed regulations deleted sex bias and sex role stereotyping as goals of the program.

Discussion: The Secretary did not intend for the new definition of "educational equity for women" to imply that institutionalized sex discrimination, sex bias, and sex role stereotyping no longer exist. The elimination of the institutional and social barriers to women's educational equity, including eliminating sex bias and sex role stereotyping, are indeed among the purposes of this program. The Secretary only intended to streamline the definition of "educational equity for women". The definition of sex role stereotyping was deleted because it was not used in the revised regulations and, therefore, did not need to be defined.

Changes: The definition of "educational equity for women" in § 245.5(b) has been revised and expanded, to clarify that the elimination of institutionalized barriers and inequitable educational practices and procedures that prevent full and fair participation by women in educational programs and in American society generally is part of the definition.

Projects of General Significance

Section 246.1 What are projects of general significance under the Women's Educational Equity Act Program?

Comments: The proposed regulations stated that, under the general grants program, projects can be funded if they are "likely to" have a national, statewide or general significance. Several commenters felt that the phrase "likely to" weakens the requirement that only projects of national, statewide, or general significance may be funded.

Discussion: The Secretary did not intend to weaken the statutory requirement that general significance grants have national or statewide impact. Therefore, to avoid confusion, the Secretary has adopted the change suggested by the commenters.

Changes: The words "likely to" have been deleted from § 246.1(b).

Comments concerning multiple discrimination

Comments: Many commenters stated that the proposed regulations reflected a decreased interest in and lack of understanding of the different needs of racial and ethnic minority women and disabled women. In support of their position, these commenters pointed to the deletion from the current regulations of § 745.6 (requiring applications that proposed broad-based projects to address the diverse needs of women); §§ 745.24 and 745.25 (the priorities for projects addressing racial and ethnic minority women and girls and disabled women and girls); and § 745.32(c) (a selection criterion under which the Secretary awards points for projects that will address or may be adapted to address the educational equity needs of racial and ethnic minority group women). Moreover, one commenter stated that by deleting § 745.6, it appears that the Secretary believes that discrimination no longer exists against women and girls who are members of racial and ethnic groups and who are disabled.

Discussion: The Secretary did not intend to dilute the focus in this program on addressing the unique needs of women and girls who suffer multiple discrimination based on sex and on race, ethnic origin, disability, or age. Section 745.6 of the current regulations applied only to applications that propose broad-based projects designed to address all women. In reviewing the applications that are submitted to the WEEA program, the Secretary determined that most of the applications focus on the needs of a particular group of women or girls. Therefore, this requirement was not applicable to most of the applications for WEEA funding. However, the Secretary wants to ensure that all projects address or can be adapted to address the needs of women and girls who suffer multiple discrimination, and that priority funding may be given to projects that address multiple discrimination. A priority for funding projects focusing on educational equity for women and girls who suffer multiple discrimination is in § 246.11(f) of these regulations.

Changes: The Secretary has added paragraph (d) to § 246.32 (Selection Criterion: Impact), as a factor for evaluating all applications for general significance grants on how well they address the issue of multiple discrimination in their projects.

Section 246.11 What priorities may the Secretary select?

Comment: Numerous commenters recommended that the current priority for model projects to influence leaders in educational policy and administration, the separate priorities for projects that address racial and ethnic minority women and girls and disabled women and girls, and the priority for projects that address eliminating persistent barriers to educational equity for women, be retained. These commenters felt that deletion of the current priorities was another attempt to shift the emphasis of the program away from eliminating institutional sex discrimination.

Discussion: Under the WEEA, the Secretary is given the discretion to establish priorities to ensure that available funds are used for programs that most effectively will achieve the purpose of the statute. The Secretary believes that the priorities should reflect the changing needs of women and focus on broad issues of educational equity for women and girls. Thus, with the

exception of the current priority for model projects on Title IX compliance, the priorities have been revised. In most cases, applications that fall within one of the current priorities will qualify under one of the new priorities. For example, a model project to counsel women on careers in mathematics and science submitted under the priority for eliminating persistent barriers, could be submitted now under the new priority for projects designed to increase the interest and participation of women in instructional courses in mathematics, science, and computer science. Moreover, as explained above, the new priorities include a priority for projects that focus on multiple discrimination, including discrimination based on sex and age. The priorities in the current regulations do not address age discrimination.

Changes: None.

Section 246.32 Selection criterion: Impact

§ 246.32 Selection criterion: Impact.

Comments: Several commenters stated that applications should be evaluated on and receive points for the extent to which they propose projects that are of national, statewide, or general significance.

Discussion: The evaluation factor and the points attributed to how well a project is of national, statewide and general significance in the current regulations were deleted in the NPRM, because the Secretary determined that the selection factor alone did not ensure that all projects submitted for funding under part 246 would be of national, statewide, or general significance, as required by the statute. However, the Secretary agrees that projects funded under part 246 must be of national, statewide, or general significance.

Changes: Section 246.32 (Selection Criterion: Impact) has been revised to clarify that all projects funded under part 246 must be of general significance and that the Secretary determines the degree to which the project is of general significance by evaluating the extent to which the project meets the criteria in § 246.32.

Comments: A few commenters also stated the applications proposing projects of general significance should not compete with applications proposing projects of local significance.

Discussion: Applications proposing projects of general significance are evaluated under a different set of criteria than projects of local significance. They do not compete against each other for funding.

Changes: None.

Comments: A few commenters stated that the criterion requiring an applicant to demonstrate its commitment to educational equity for women should be retained.

Discussion: This selection criterion has been deleted because the Secretary determined that an applicant's commitment to educational equity for women would be demonstrated by its responses to other evaluation criteria.

Changes: None.

Section 246.34 Selection Criteria: Qualifications of Staff

Comments: Numerous commenters felt that experience in addressing women's issues should be retained as a separate evaluation factor in these regulations and that extra points should be awarded.

Discussion: The requirements under § 246.31 of these regulations ensure that the staff of the project will have sufficient knowledge and experience to carry out the project successfully. The experience of the proposed staff will affect the number of points an applicant can receive under this criterion. A separate evaluation factor for experience is not necessary.

Changes: None.

Projects of Local Significance

Section 247.40 What portion of costs must a recipient contribute?

Comments: One commenter felt that the requirement for successful applicants to contribute to the approved costs of the project is discriminatory and imposes an undue hardship on smaller applicants that may not be able to meet this requirement.

Discussion: The WEEA statute mandates that the Department pay only a portion of the costs to eligible entities for the establishment and operation of special programs and projects of local significance. In determining how much of the cost of the project a grantee should assume, the Secretary considered the statutory requirement, including the two-year limitation on funding projects under this program, and the limited funding available for this program. The Secretary determined that the levels of grantee contributions established in these regulations would ensure that grantees would be committed to their projects, and more likely continue the projects when the grantees could no longer receive funding under this program.

Changes: None.

[FR Doc. 89-21377 Filed 9-12-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Notice Inviting Applications for New Awards Under the Women's Educational Equity Act Program for Fiscal Year 1990 (CFDA No. 84-083)

Purpose of Program: To promote educational equity for women and girls, particularly those who suffer multiple discrimination, bias, or stereotyping; and to provide assistance to agencies and institutions to meet the requirements of title IX of the Education Amendments of 1972.

Deadline for Transmittal of Application: November 2, 1989.

Deadline for Intergovernmental Review Comments: January 1, 1990.

Applications Available: September 26, 1989.

Available Funds Anticipated: It is estimated that approximately $2,436,000 will be available for fiscal year 1990 awards under this program. However, applicants should note that the Congress has not yet completed action on the fiscal year 1990 appropriation.

Estimated Range of Awards: Challenge Grants: $30,000–$40,000; General Grants: $50,000–$200,000.

Estimated Average Size of Awards: Challenge Grants: $35,000; General Grants: $125,000.

Estimated Number of Awards: Challenge Grants: 15; General Grants: 15.

Project Period: Up to 24 months.

Priority: For FY 1990, the Secretary has allocated 60% of the funds to be divided equally among the following priorities listed in 34 CFR 246.11:

(a) Projects to develop new educational programs, training programs, counseling programs, or other programs, or to expand existing model programs, designed to accomplish the following:

(1) Reduce the rate at which women drop out of formal education.

(2) Encourage women dropouts to resume their education. (20%)

(b) Projects to develop new educational programs or expand existing model educational programs designed to enhance opportunities for educational achievement by economically disadvantaged women. (20%)

(c) Projects to develop new educational programs or expand existing model educational programs designed to enhance opportunities for educational achievement by women who suffer multiple discrimination on the basis of sex and race, ethnic origin, age, or disability. (20%)

These priorities apply to general significance and challenge grants. An applicant must indicate if it is submitting an application under one of these priorities. Applications under a priority complete against other applications submitted under that priority for funds allocated to the priority. An applicant may propose a project that is not under one of these priorities but is within the scope of the authorized activities described in 34 CFR 245.11. If an applicant fails to identify a priority, the application will complete with other applications that are not under one of these priorities. The remaining 40% of the funds will be allocated for applications within the scope of other authorized activities. An applicant may not submit an application under one of the priorities and also submit the same application for consideration to compete with applications that are not under one of the priorities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, and 85; and (b) the regulations for this program in 34 CFR Parts 245–247 published in this issue of the **Federal Register**.

For Applications or Information Contact: Mrs. Alice T. Ford, U.S. Department of Education, 400 Maryland Avenue SW., Room 2053, FOB #6, Washington, DC 20202–6439. Telephone: (202) 732–4351.

Program Authority: 20 U.S.C. 3041–3047.

Dated: September 6, 1989.

Daniel F. Bonner,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89–21378 Filed 9–12–89; 8:45 am]

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federal register

Wednesday
September 13, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Orlando Terminal Control Area and Revocation of the Orlando International Airport Radar Service Area, Florida; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-4]

RIN 2120-AD03

Proposed Establishment of the Orlando Terminal Control Area and Revocation of the Orlando International Airport Radar Service Area, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Terminal Control Area (TCA) at Orlando, FL. The TCA would consist of airspace from the surface or higher within a 30-nautical-mile radius of the Orlando International Airport up to and including 10,000 feet above mean sea level (MSL). Establishment of this TCA would impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, an operable very high frequency omni-directional radio range (VOR) or tactical air navigational aid (TACAN) receiver, and restrictions on student pilot operations. This action is intended to increase the capability of the air traffic control (ATC) system to separate aircraft in the terminal airspace around the Orlando International Airport. The objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users. Orlando International Airport is currently served by an Airport Radar Service Area (ARSA) which would be rescinded concurrent with the establishment of this TCA.

DATES: Comments must be received on or before November 13, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 89-AWA-4, 800 Independence Avenue SW., Washington, DC 20591.

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-AWA-4." 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.

Related Rulemaking Actions

On May 21, 1970, the FAA published FAR Amendment 91-78 (35 FR 7782) which provided for the establishment of TCA's.

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule adopted continues to require a transponder for operation in each TCA.

On June 21, 1988, the FAA published a final rule which requires Mode C equipment when operating within 30 nautical miles of any designated TCA primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) establishes a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminates the helicopter exception from the minimum navigational equipment requirement.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide

aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 24 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue Notices proposing the establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

PRE-NPRM Public Input

Airspace Meetings

Two pre-NPRM airspace meetings were held August 16–17, 1988, to permit local aviation interests and airspace users an opportunity to present ideas on the design of the proposed Orlando TCA. In attendance were fixed-base operators, civilian flight instructors, the Florida Department of Transportation, the TCA Planning Workshop, representatives of Sun 'n Fun Experimental Aircraft Association Fly-In, Inc., the Florida Aviation Trades Association, private pilots and concerned citizens. Although it was generally agreed that a TCA is needed for the Orlando/Tampa area, it was felt that the generic TCA should be replaced by a rectangular design, which would be about 33×41 miles, with altitudes ranging from the surface to 8,000 feet MSL. This rectangular design would permit access to Orlando Executive Airport and Kissimmee Municipal Airport, FL.

Written Comments

Five comments were received. Three supported and two opposed the establishment of the TCA. The comments received are summarized as follows:

1. The Florida Department of Transportation Planning and Utilization Committee offered a different airspace configuration for the TCA which they felt would accomplish the enhancement of safety and separation of traffic required at a major airline hub and military base, yet allow access to other airports by general aviation users.

2. The Florida Aviation Trades Association recommended acceptance of the plan and the boundaries of the TCA and mandatory Mode C use in the Orlando area.

3. The Marathon Flight School, Inc., recommended a cutout for the Kissimmee Municipal Airport and the lowering of the floor from 5,000 to 4,000 feet MSL, suggesting that this would allow better handling of IFR traffic into the Orlando International Airport.

4. The Central Florida General Aviation Association generally supports the implementation of the Orlando TCA.

5. A general aviation pilot expressed his concern that the establishment of the TCA would restrict the operation of his float plane which he bases at his home on Bear Gully Lake, FL. The pilot requested that some mechanism be established for use of the lower altitudes of airspace.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a TCA at Orlando, FL. The total number of annual enplaned passengers at Orlando International Airport was 4,847,194, as of June 1988, which more than qualifies it for consideration as a candidate for a TCA. The total number of airport operations was 251,602 of which 60 percent were air carrier operations. This figure exceeds the criteria necessary for the establishment of a TCA. Additionally, within the proposed boundaries more than 430,000 flights are conducted annually. Consequently, the FAA has determined that establishment of a TCA at Orlando International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in that terminal area. Orlando International Airport is currently served by an ARSA, which would be rescinded concurrent with the establishment of this TCA. The proposed location is depicted on the attached chart.

Section 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any pilot arriving at any airport within the TCA or flying through the TCA must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA; (3) hold at least a private pilot certificate; and (4) meet the requirements of § 61.95 of the Federal Aviation Regulations if the aircraft is operated by a student pilot. Any aircraft arriving at any airport within a TCA or flying through a TCA must: Have an operable VOR or TACAN receiver; have an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and be equipped with the applicable operating transponder and automatic altitude-reporting equipment specified in paragraph (a) of § 91.24 of the Federal Aviation Regulations, except as provided in paragraph (d) of that section. Unless otherwise authorized by ATC, all large turbine-engine aircraft operating to or from a primary airport must be operated above the designated floors of a TCA. The pilot of any aircraft departing from an airport located within a TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions, and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in §§ 71.12, 71.401, and 71.403 of part 71 of the Federal Aviation Regulations (14 CFR part 71); and §§ 91.1 and 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91).

The standard configuration of a TCA consists of three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles respectively. The vertical limits of the TCA are 12,500 feet above MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration contained herein is the result of an extensive staff study conducted by the local FAA authority after obtaining public input from informal airspace meetings and coordinating with the FAA regional office. The FAA has determined the

following proposed TCA airspace configuration is consistent with TCA objectives and allows consideration of terminal area flight operations and terrain:

Summary

The basic design of the proposed Orlando TCA is a rectangle with airspace extending upward from the surface to 10,000 feet MSL. The outer segments of the TCA extend upward from 6,000 feet to 10,000 feet MSL. Airports within the TCA include Orlando Executive, Sanford Regional, Kissimmee Municipal, Orlando Country. Orlando West, Mid Florida Air Service, Dunn Air Park. Space Center Executive, and Orlando International. The estimated number of locally based aircraft is 1,110. Approximately 767 of these aircraft would be required to purchase Mode C transponders.

The proposed Orlando TCA would bring all aircraft operating within that airspace under ATC, thereby increasing aviation safety. The Mode C equipment requirements would make potential traffic conflicts readily apparent to the controller. Inadvertent intrusions into the TCA by Mode C equipped aircraft would minimize the safety problem to aircraft operating within 30 nautical miles of the TCA. The ever-increasing operations in the Orlando terminal airspace by air carrier and high-performance business aircraft compound the complexity of the problem.

The preceding general summary of the proposed TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at the Orlando International Airport. Air traffic control would provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is requisite to aircraft operations within that airspace. Establishment of this TCA would greatly enhance the safety of flight within the congested airspace overlying the Orlando metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.403 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each proposed rulemaking action to assure that the public is not burdened with rules having costs which outweigh their benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Orlando, FL. This regulatory evaluation summary should be read in conjunction with the NPRM since it provides additional background information.

This proposal is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Orlando International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Cost-Benefit Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of the proposed rule to be $7.3 million ($4 million, discounted, 15 years) in 1987 dollars. Approximately $3.8 million (discounted) or 95 percent of the total estimated costs would be incurred by the FAA primarily for additional personnel. The remaining costs would be incurred by small GA aircraft operators who would be required under this proposal to equip their aircraft with Mode C transponders sooner than they would have for the ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule will be implemented in two phases. Phase I, which began in July 1989, requires a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA-primary airports. There are currently 24 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA-primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders would need ATC authorization to fly within 30 nautical miles of a TCA-primary airport, within 10 nautical miles of an ARSA-primary airport, or within controlled airspace of other designated airports that would also require Mode C transponders.

Thus, this evaluation, as well as the Mode C rule, assumes that all aircraft without Mode C would acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment would be nonelectrical types. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this proposal would only incur the opportunity cost of capital by requiring them to acquire, install, and maintain Mode C transponders one year earlier than they would be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This proposed rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions due to increased ATC in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this proposal would be the reduction in the probability of midair collisions resulting from converting the existing ARSA to a TCA. However, due to the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this proposal is expected to be significantly lower. Nevertheless, this proposal is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot but, rather, is due purely to chance.) Since midair collisions involving part 135 aircraft and especially part 121 aircraft are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety from implementing this proposal.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's' aircraft operations in the 23 existing TCA's, and a random sample of 23 of the existing 79

ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate a more efficient separation of aircraft in congested airspace.

As the result of these findings, if the existing Orlando ARSA were to remain unchanged (and the recent Mode C and TCAS rules were not in effect), the Orlando Terminal Area would be expected to experience approximately 2.3 critical NMAC's annually (or 34 critical NMAC's over the next 15 years). If, however, the ARSA were to become a TCA, this figure would reduce to approximately 0.7 critical NMAC's annually (or 11 critical NMAC's over the next 15 years). Thus, over the next 15 years, this proposal could result in the reduction of approximately 23 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's would never materialize as predicted primarily because of the Mode C rule as it is applied to the Orlando ARSA and, to some extent, the TCAS rule.

According to Phase II of the Mode C rule, all aircraft operating within ten nautical miles (except for flights below the outer five-mile "shelf") of an ARSA-primary airport must be equipped with a Mode C transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this proposal to create a TCA in 1990 at Orlando is that the safety enhancements of the Mode C and TCAS requirements will occur earlier than would be otherwise expected without this proposal. A second safety benefit would be in terms of the lowered likelihood of midair collisions as a result of expanding the lateral boundaries by 20 nautical miles through replacing the Orlando ARSA with a TCA.

Thus, the safety benefits of the establishment of a new TCA, while positive, would be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this proposal essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions). It is important to note that part of these safety benefits would be attributed to the TCAS rule. Thus, the potential safety benefits of this proposal, and the Mode C and TCAS rules, are considered to be inextricably linked.

Another potential benefit of the proposed rule would be improved operational efficiency on the part of FAA air traffic controllers. Under the proposed rule, Mode C transponder requirements would ease controller workload as a result of aircraft being controlled due to a reduction in radio communications. The proposed rule would also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of controller workload, increased by separation requirements in the proposed TCA, would be somewhat offset due to the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and in the number of VFR aircraft delayed during busy periods. As the result of converting the existing Orlando ARSA to a TCA, improved operational efficiency would accrue due to the availability of additional air traffic controllers. If the Orlando ARSA were to remain intact, such air traffic personnel would not be required. Therefore, the potential benefits of improved operational efficiency, which are not considered to be quantifiable in monetary terms in this evaluation, would be attributed to this proposal rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that would accrue from implementation of the proposed rule is estimated to be $4 million (discounted, in 1987 dollars). Approximately five percent of this total cost estimate would fall on those GA aircraft operators without Mode C transponders in the form of opportunity costs requiring them to acquire such avionics equipment, including maintenance, sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted would incur an estimated one-time cost ranging from $86 to $191 (discounted) under the proposed rule. (As a result of the opportunity cost concept, the derivation of these cost estimates are too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these costs estimates were made.)

The potential benefits of the proposed rule would be the lowered likelihood of midair collisions from the conversion of the existing ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this proposal independent of the Mode C and TCAS rules, but the FAA believes this risk would be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than within an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's would continue to experience reduced critical NMAC's. In addition, the proposed rule would generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Orlando Terminal Area, the FAA firmly believes the proposed rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this NPRM.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this proposed rule would be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this proposed rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders then the annual one-time cost per impacted aircraft would be approximately $210 (undiscounted, for the purpose of comparability with the figure of $3,700). The total annual one-time cost per small entity would amount to an estimated $1,890. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This proposed regulation 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, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, terminal control areas, airport radar service areas.

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.

§ 71.403 [Amended]

2. Section 71.403 is amended as follows:

Orlando, FL [New]

Primary Airport

Orlando International Airport (lat. 28°25'54"N., long. 81°19'29"W.)

Boundaries:

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at lat. 28°30'15" N., long. 81°26'30" W.; to lat. 28°34'00" N., long. 81°16'15" W.; to lat. 28°34'00" N., long. 81°11'00" W.; to lat. 28°19'15" N., long. 81°10'45" W.; to lat. 28°17'45" N., long. 81°14'45" W.; to lat. 28°19'30" N., long. 81°26'45" W.; to the point of beginning.

Area B. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL beginning at lat. 28°28'45" N., long. 81°30'15" W.; to lat. 28°30'13" N., long. 81°26'30" W.; to lat. 28°19'30" N., long. 81°26'45" W.; to lat. 28°17'45" N., long. 81°14'45" W.; to lat. 28°19'15" N., long. 81°10'45" W.; to lat. 28°11'30" N., long. 81°10'30" W.; to lat. 28°11'30" N., long. 81°29'30" W.; to the point of beginning.

Area C. That airspace extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at lat. 28°41'00" N., long. 81°31'00" W.; to lat. 28°40'30" N., long. 81°11'15" W.; to lat. 28°34'00" N., long. 81°11'00" W.; to lat. 28°34'00" N., long., 81°16'15" W.; to lat. 28°30'15" N., long. 81°26'30" W.; to lat. 28°28'45" N., long. 81°30'15" W.; to the point of beginning.

Area D. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at lat. 28°51'00" N., long. 81°39'00" W.; to lat. 28°51'15" N. long. 81°36'00" W.; to lat. 28°52'30" N., long. 81°18'00" W.; to lat. 28°51'30" N., long. 81°10'30" W.; to lat. 28°51'00" N., long. 81°05'30" W.; to lat. 28°32'00" N., long. 81°02'00" W.; to lat. 28°16'15" N., long. 80°58'15" W.; to lat. 28°03'00" N., long. 81°05'45" W.; to lat. 28°03'00" N. long. 81°36'30" W.; to lat. 28°13'00" N., long. 81°40'30" W.; to lat. 28°37'30" N., long. 81°46'30" W.; to lat. 28°41'30" N., long. 81°44'15" W.; to the point of beginning, excluding Areas A, B, and C.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at lat. 28°10'15" N. long. 81°46'30" W.; to lat. 28°13'00" N., long. 81°40'30" W.; to lat. 28°03'00" N., long. 81°36'30" W.; to lat. 28°03'00" N., long. 81°46'45" W.; to the point of beginning.

Area F. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at lat. 28°48'30" N., long. 81°50'00" W.; to lat. 28°55'30" N., long. 81°43'00" W.; to lat. 28°51'15" N., long. 81°36'00" W.; to lat. 28°51'00" N., long. 81°39'00" W.; to lat. 28°41'30" N., long. 81°44'15" W.; to the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at lat. 29°00'00" N. long. 81°10'30" W.; to lat. 29°00'00" N., long. 81°00'00" W.; to lat. 28°53'00" N., long. 81°00'00" W.; then clockwise along the 27 NM DME arc of the Orlando VOR to lat. 28°23'14" N. long. 80°51'21" W.; to lat. 28°28'15" N. long. 81°00'37" W.; to lat 28°32'00" N., long. 81°02'00" W.; to lat. 28°51'00" N., long. 81°05'30" W.; to lat. 28°51'30" N., long. 81°10'30" W.; to the point of beginning.

§ 71.501 [Amended]

3. Section 71.501 is amended as follows:

Orlando International Airport, FL [Removed]

Issued in Washington, DC, on September 7, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

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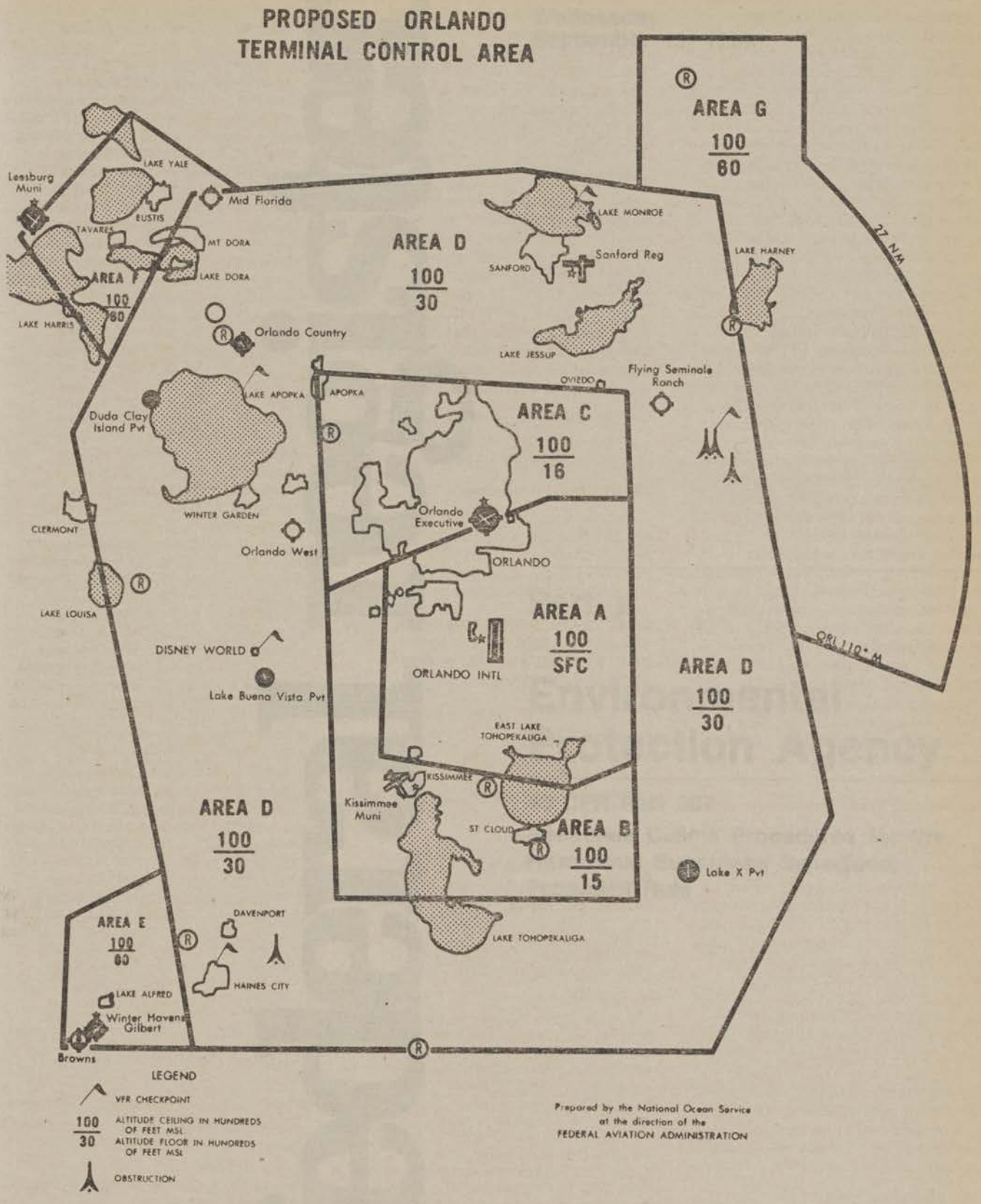

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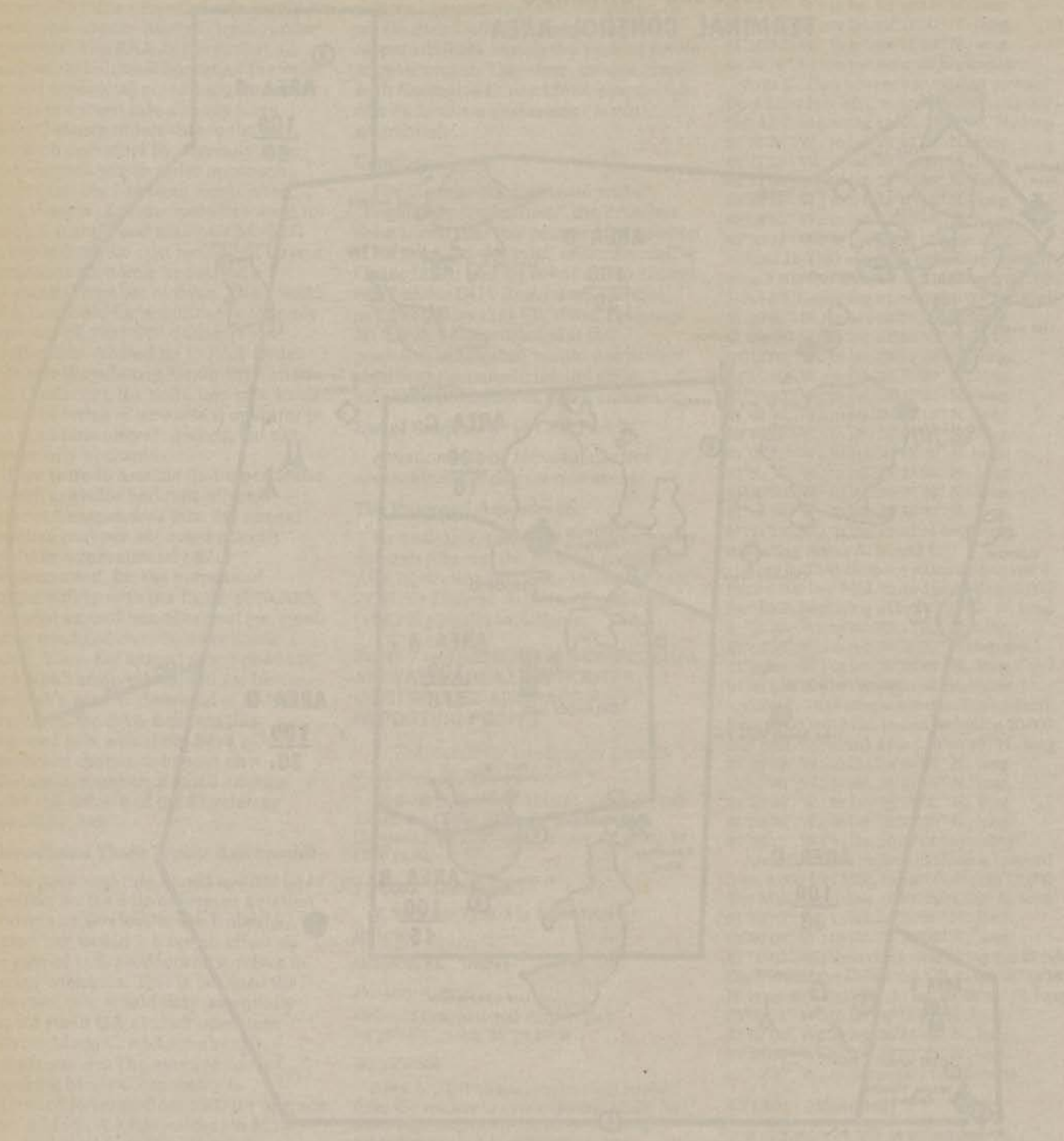

federal register

Wednesday
September 13, 1989

Part V

Environmental Protection Agency

40 CFR Part 307

Response Claims Procedures for the Hazardous Substance Superfund; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 307

[FRL-3399-6]

RIN 2050-AA90

Response Claims Procedures for the Hazardous Substance Superfund

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing regulations to establish the procedures for filing, evaluating, and resolving claims for costs incurred for responding to releases of harzardous substances, pollutants, or contaminants asserted against the Hazardous Substance Superfund (the "Fund") established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or the "Act"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. 9601 *et seq.* In addition, this proposed regulation would establish procedures for notifying concerned parties regarding limitations on the payment of response claims. This proposed regulation is consistent with EPA's proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP" or the "Plan") (53 FR 51394 *et seq.*, December 21, 1988).

DATES: Comments must be submitted on or before November 13, 1989.

ADDRESSES: Written comments on the proposed procedures may be submitted, in triplicate, to the Superfund Docket, located in Room 2427, at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The record supporting this rulemaking is contained in the Superfund Docket and is available for public inspection by appointment only, (202) 382-3046, from 9:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays. As provided in 40 CFR Part 2, EPA may charge a reasonable fee for copying services.

FOR FURTHER INFORMATION CONTACT: William O. Ross, Office of Emergency and Remedial Resonse (WH-220), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4645, or The RCRA/CERCLA Hotline, (800) 424-9346 (or 382-3000 in the Washington, DC metropolitan area).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction

This proposed response claims regulation provides the forms and procedures required by section 112(b)(1) of CERCLA for filing response claims authorized by sections 111(a)(2) and 122(b)(1) of the Act. This proposed regulation applies only to claims for reimbursement from the Fund established by section 517 of SARA. This proposed regulation is intended for use by any individual, private entity, potentially responsible party, or foreign entity eligible to submit a claim pursuant to section 111(a)(2) or 122(b)(1) of CERCLA. Such persons, as prescribed by section 112, must use the forms and procedures as promulgated in this rule. EPA has elected to utilize the procedures in this proposed rule, which are issued under the authority of section 112, to implement its authority to reimburse from the Fund parties who are potentially liable for a release and who agree to conduct a response action pursuant to section 122(b)(1) of CERCLA.

This proposed rule does not apply to: (1) Responses undertaken pursuant to section 104 of CERCLA, (2) petitions for reimbursement of the costs of complying with a CERCLA section 106 order, (3) actions to recover response costs under section 107 of CERCLA (See also Section IV.D.1. of this preamble), or (4) reimbursement of local governments pursuant to section 123 of CERCLA. This regulation also does not address claims for response to discharges of petroleum, as defined in sections 101(14) and 101(33) of CERCLA, since such response actions are not covered by CERCLA.

This proposed regulation addresses only response claims; i.e., claims for necessary response costs incurred as a result of carrying out the NCP (40 CFR Part 300). The NCP is established under section 311(c) of the Clean Water Act and amended under section 105 of CERCLA. The NCP provides for efficient, coordinated, and effective response to: (1) Discharges or substantial threats of discharges of oil, (2) releases or substantial threats of releases of hazardous substances, and (3) releases or substantial threats of releases of pollutants or contaminants that may present an imminent and substantial danger to public health or welfare. The NCP provides for the division and designation of responsibility among the Federal government, States and political subdivisions, and Indian Tribes in response actions, and specifies the appropriate roles for private entities. The recently proposed revisions to the NCP would clarify the roles of these parties as they relate to response claims authorized under section 111(a)(2) of CERCLA.

Today's proposed response claims rule would establish the process under which claimants may be reimbursed for the costs of response actions from the Fund. The claims process consists of two parts: the preauthorization process and the claims award process.

Under the preauthorization process, a potential claimant must first obtain the prior approval of EPA for any proposed response actions for which he/she plans to seek reimbursement. This prior approval is necessary for the claimant to be consistent with the NCP, and is initiated by submitting an application for preauthorization to EPA. The process for obtaining EPA's prior approval to submit a claim for a response action is referred to as "preauthorization." Only after the Agency has determined that the preauthorization application is complete will EPA review and analyze

the application according to the criteria proposed in today's rule. If EPA determines that the preauthorization application adequately meets the requirements for approval, the applicant will be approved to conduct the proposed response actions. EPA will then prepare a Preauthorization Decision Document (PDD) that will contain the terms and conditions that must be satisfied by the claimant in order to be reimbursed by EPA from the Fund. (Hereinafter, response actions reviewed and approved by EPA through the preauthorization process will be referred to as "preauthorized response actions" or "response actions preauthorized by EPA.")

After the preauthorized response actions have been completed by the protential claimant, he/she may submit a claim(s) to EPA under the claims award process for the previously-approved costs of the completed actions. Once EPA determines that the claim contains all the information and documentation necessary for evaluation (i.e., the claim has been "perfected"), the Agency will review and analyze the claim according to the criteria proposed in this rule and contained in the PDD. If the claim sufficiently fulfills the established requirements, EPA will award the claim and reimburse the claimant in the amount of the approved response costs. If a claim for response costs (which has been previously preauthorized) is denied by EPA in whole or in part, the claimant is authorized by section 112(b)(2) of CERCLA to request an administrative hearing.

II. Statutory Background

CERCLA authorizes several options for responding to releases or substantial threats of releases of hazardous substances, pollutants, or contaminants. This section describes briefly the framework of the statute as it applies to this regulation, the types of claims compensable under CERCLA, and the planning required for response actions.

A. Statutory Framework

CERCLA establishes broad authority for responding to actual or threatened releases of hazardous substances, pollutants, or contaminants. CERCLA establishes the Fund for use by the Government to respond to releases and to pay claims to certain other parties for responding to releases. CERCLA also imposes liability on certain categories of persons who own or operate vessels or facilities (both currently and in the past) and on persons who were involved with the transportation, treatment, or disposal of hazardous substances. Furthermore, the Act provides authority to pursue enforcement and abatement actions against these responsible parties.

CERCLA authorizes responses to releases or threats of releases of hazardous substances, pollutants or contaminants from vessels and facilities. ("Hazardous substance" is defined by section 101(14) of CERCLA, and the term "pollutant or contaminant" is defined by section 101(33) of CERCLA.) Under section 104 of CERCLA, the Government may take response actions whenever there is a release or a substantial threat of a release of a hazardous substance into the environment or whenever there is a release or substantial threat of a release of pollutants or contaminants into the environment that may present an imminent and substantial danger to public health or welfare. (Hereinafter, unless otherwise indicated, the term "release" refers to either actual or threatened releases of hazardous substances, or actual or threatened releases of pollutants or contaminants into the environment that may present an imminent and substantial danger to public health or welfare.) "Release" is broadly defined by section 101(22) of CERCLA, and includes abandoning or discarding barrels, containers, and other closed receptacles containing hazardous substances, pollutants, or contaminants.

In the event of a release, EPA may use CERCLA's response authorities unless: (1) The release is of a naturally occurring substance in its unaltered form, (2) the release is from products that are part of residential or business structures and result in exposure within the structure, or (3) the release is into drinking water due to deterioration of the drinking water system through ordinary use. CERCLA section 104(a)(3). However, EPA may respond to any of the above releases if the release constitutes a major public health or environmental emergency and no other person with the authority and capability to respond to the emergency will respond in a timely manner. CERCLA section 104(a)(4).

Parties responsible for a release can conduct any type of response activity; however, section 104(a)(1) of CERCLA requires that certain conditions be met before EPA authorizes a responsible party to conduct either a remedial investigation or a feasibility study (RI/FS). Section V of this Preamble discusses these conditions and other special requirements for preauthorization of potentially responsible parties.

The first type of response action authorized by section 104(a) of CERCLA is a removal. "Removal," as defined by section 101(23) of CERCLA, includes: (1) Cleanup or removal of released hazardous substances from the environment; (2) actions to prevent releases from occurring; (3) monitoring, assessment, or evaluation of threatened or actual releases; and (4) other actions that prevent, minimize, or mitigate damage to public health, welfare, or the environment. Under the NCP, when the lead agency determines that there is a threat to public health, welfare or the environment, it may take any appropriate action to abate, minimize, stabilize, mitigate or eliminate the release, or the threat resulting from that release. Obligations from the Fund for removal actions are limited to not more than 12 months in duration or the expenditure of not more than $2 million unless certain statutory findings are made. CERCLA section 104(c)(1). One hundred percent of the cost of these removal actions may be paid out of the Fund (unless the site was operated at the time of disposal by a unit of State or local government and there is a subsequent remedial action). Removal actions should, to the extent practicable, contribute to the efficient performance of any long-term remedial actions with respect to the release concerned.

The other type of response action available under section 104(a) of CERCLA is the remedial action. "Remedial actions", as defined in section 101(24) of CERCLA, may be taken in place of, or in addition to, removal actions. Remedial actions are those actions consistent with a permanent remedy that are taken to prevent or minimize the release of hazardous substances into the environment so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. Remedial actions may include off-site transport and storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials. The NCP restricts CERCLA-funded remedial actions to sites that are on the National Priorities List (NPL). Remedial actions may take several years to plan, design, and implement. There is no statutory limitation on the amount of time or money that can be spent for a remedial action. However, section 121 of CERCLA sets forth a number of requirements for remedial actions: the remedy must be protective of human health and the environment, cost effective, and utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. States are required

by section 104(c)(3) of CERCLA to contribute ten percent of the cost of the remedial action selected (or at least fifty percent of all response costs at the site if that site was operated by the State or political subdivision at the time of any disposal of hazardous substances).

Section 104(b) authorizes studies, investigations, monitoring, surveys, testing, and other information-gathering necessary to identify the existence, extent, source, and nature of an actual or threatened release, and the extent of danger to the public health, welfare, or the environment. Under this broad authority, EPA may authorize Fund expenditures for studies and investigations that are necessary or appropriate to plan and direct response actions. One hundred percent of the costs of section 104(b) studies may be paid from the Fund; i.e., there is no requirement of a State cost-share.

Section 106(a) of CERCLA authorizes Federal enforcement actions, including administrative orders, where a release or threatened release of a hazardous substance may cause an imminent and substantial endangerment to the public health, welfare, or the environment. Section 106(b) of CERCLA allows certain persons to petition EPA for reimbursement of the costs, plus interest, of complying with a section 106(a) order in certain circumstances.

Section 107 imposes broad liability for a hazardous substance release on: (1) Current owners or operators of vessels; (2) current and certain former owners and operators of facilities; and (3) certain persons connected with the disposal, treatment, or transportation of hazardous substances. Section 107 also confers a right of action upon the United States, States, and Indian Tribes to recover response costs incurred in a manner not inconsistent with the NCP; and upon "other persons" to recover necessary response costs incurred in a manner consistent with the NCP.

Section 111 of the Act governs how the money in the Fund may be used. Under this section, funds may be made available directly to units of governments to pay for "response costs incurred pursuant to section 104 of this title" (section 111(a)(1)). Payment also may be made to persons who submit claims for their response costs if those response actions were approved in advance (i.e., preauthorized) by EPA. (*See* section 111(a)(2)) This proposed rule applies to response claims asserted under section 111(a)(2) of CERCLA.

Other paragraphs of section 111 contain: authorization for payment of technical assistance grants, authorization to pay costs of pilot programs to remove or treat lead-contaminated soil, and limitations on the use of Fund money and other matters relevant to this regulation. Section 111(o) requires that procedures be developed so that local and State officials and "other concerned persons" shall be informed of the limitations on the payment of claims for necessary reponse costs "as soon as practicable" after a site is placed on the NPL. EPA is today proposing procedures to implement section 111(o) of CERCLA. The procedures are discussed in Section IX of this preamble.

Section 112 of the Act sets forth procedures for asserting claims against the Fund. That section requires the President (by delegation, EPA) to establish forms and procedures for claims. If a claim is denied in whole or in part, a claimant can request an administrative hearing. Payment of any claim is subject to the claimant subrogating to the United States his/her rights as claimant to recover costs incurred from the person responsible for the release to the extent his/her response costs are compensated from the Fund.

Section 122 of CERCLA was added by SARA to provide procedures for negotiating settlements with potentially responsible parties (PRPs) willing to conduct and finance response actions. One aspect of this CERCLA settlement provision directly affects response claims: the section 122(b) authorization for "mixed funding" agreements with PRPs. Preauthorization is one form of mixed funding agreement. The others are described in detail in "Superfund Program; Mixed Funding Settlements" (53 FR 8279 *et seq.*, March 14, 1988). EPA may agree to the partial reimbursement of a PRP's response costs. Such reimbursement may be accomplished by the PRPs filing a response claim against the Fund. While States and political subdivisions are otherwise ineligible for reimbursement through the response claims mechanism, States and political subdivisions that are PRPs and that enter into settlement agreements pursuant to section 122(b)(1) of CERCLA are eligible for reimbursement.

B. Response Mechanisms

CERCLA provides three basic mechanisms for removal or remedial actions: (1) Administrative orders and civil judicial actions to secure abatement of an actual or threatened release and otherwise protect human health, welfare, or the environment; (2) Fund-financed actions (either directly by the Federal Government or by a State, political subdivision, or Indian Tribe) through a contract or cooperative agreement, as authorized by section 104 of CERCLA; and (3) Fund-reimbursed actions by "any other persons" through a reponse claim against the Fund.

The first statutory mechanism authorizes the President to secure, through the Attorney General, such relief as may be necessary to abate an imminent or substantial endangerment to public health or welfare or the environment due to an actual or threatened release (section 106(a)). EPA may secure such relief through a judicial settlement or filing a law suit. This section also authorizes the issuance of administrative orders to responsible parties requiring them to abate releases or threatened releases.

The second mechanism authorized by CERCLA (section 104) is a direct government removal or remedial action conducted by a Federal agency, State (or political subdivision thereof), or Indian Tribe. Such action will not be taken by the government if the lead agency determines that the response will be done properly and promptly by a responsible party. Obligations from the Fund for removal actions may not continue beyond $2 million or after 12 months has elapsed from the date of initial response unless EPA makes certain determinations pursuant to section 104(c)(1) of CERCLA regarding the necessity to continue the response actions due to emergency conditions, the unavailability of such assistance by others on a timely basis, or that continued response action is consistent with the remedial action to be taken. As provided by the NCP, Fund-financed remedial actions may be undertaken only at sites on the NPL. The NPL, as authorized by section 105, currently includes 890 national priority sites and 273 proposed sites for remedial response (40 CFR part 300, 54 FR 13296 *et seq.*, March 31, 1989). Federal-lead removal actions are implemented through several contracts covering geographical regions of the country. Remedial actions directed by the Federal Government are implemented through contracts covering geographical regions of the country, and through EPA agreements with the U.S. Army Corps of Engineers and the Department of the Interior's Bureau of Reclamation.

Pursuant to section 104(d)(1) of CERCLA, response actions may also be implemented through cooperative agreements between EPA and any of the following parties: States, political subdivisions, or Indian Tribes. Undertaking response actions through cooperative agreements may afford advantages to the Federal Government over the use of claims in that: (1) Cooperative agreements must contain

certain assurances and provide minimum financial contributions by the State, and (2) the procedures for awards, settlements, and payments under cooperative agreements are well established and known to both parties.

CERCLA prohibits EPA from funding any section 104 remedial action unless the affected State first assures: (1) That it will share in the costs of the action; (2) the availability of an off-site disposal facility that complies with Subtitle C of the Solid Waste Disposal Act, if wastes are to be taken off-site; (3) all future maintenance of the remedial action; (4) after October 17, 1989, adequate capacity for hazardous waste to be generated during a 20-year period; and (5) that it will accept title to any real property acquired by EPA to conduct the response action. (*See* 40 CFR part 35, Subpart O regarding assurances from Indian Tribes.) EPA utilizes a cooperative agreement to obtain State assurances, among other things, when a State has lead responsibility for a remedial action. EPA uses Superfund State contracts to obtain these assurances when the Federal Government has lead responsibility for a remedial action.

For most sites listed on the NPL, EPA expects to pursue enforcement actions against the responsible party or enter into contracts or cooperative agreements with States, political subdivisions thereof, or Indian Tribes for the response actions. EPA and the States have already initiated response or enforcement actions at many of these sites and will initiate actions at many more in the near future. Under some circumstances, however, a third mechanism (i.e., claims for reimbursement of response costs under section 111 of CERCLA) may be useful to expedite remedial and removal actions.

The above mechanisms are not mutually exclusive and may be used in combination. For example, EPA may designate a site, for purposes of an RI/FS, as Fund-lead (mechanism two) and still bring an enforcement action against a responsible party (mechanism one) to provide for necessary remedial design and construction. Similarly, an enforcement action may be initiated against a responsible party, which may result in a partial settlement and authorization for a claim against the Fund for a portion of the cleanup costs. The Agency in most instances will bring suit under section 107 to recover any necessary response costs where there are viable PRPs.

C. Response Measures Compensable as Claims

Response measures which may be compensated as claims under this regulation (as defined in sections 101 (23) and (24) of CERCLA, and detailed in §§ 300.415(d) and Appendix D of the proposed revised NCP) may include: (1) Cleaning up or removing hazardous substances from the environment; (2) actions that may be necessary to prevent a threatened release of a hazardous substance into the environment; (3) monitoring, assessing, and evaluating the release or threatened release of hazardous substances; (4) disposing of removed substances; (5) constructing security fencing or other measures to limit access; (6) supplying alternative drinking water; (7) providing temporary evacuation and housing for threatened individuals for whom other arrangements have not been made; and (8) other actions as the lead agency may determine to be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release.

Pursuant to § 300.700(d)(1)(iii) of the proposed revision to the NCP, no claim shall be paid pursuant to section 111(a)(2) of CERCLA for expenses incurred by a person carrying out a response action pursuant to a contract or assistance agreement with the United States. (This requirement, initially established in § 300.25(d)(1) of the 1985 NCP, remains in effect and is restated for clarification only.) Payments under such agreements shall be made in accordance with those agreements. Disputes shall also be resolved in accordance with the agreement and other guidelines and regulations governing contract and cooperative agreement dispute resolution.

CERCLA response claims are authorized under section 111, and as such are not required to meet the conditions of section 104. However, under section 111 claims may be paid for reimbursement only of necessary response costs incurred in carying out the NCP. Under § 300.700(d)(2) of the proposed revised NCP, claims for reimbursement under section 111(a)(2) must receive prior approval by EPA in order to be in conformance with the NCP. Section III below discusses the other NCP requirements with which the claimant must comply.

Individuals, private entities, foreign entities, and parties to agreements pursuant to section 122(b)(1) of CERCLA are eligible to present claims to the Fund for the costs of response actions. When multiple applicants or claimants are involved in a response action, EPA strongly encourages them to select a lead claimant for purposes of simplifying the administration of the claim. As provided by section 111(1) of the Act, foreign claimants may submit a claim only if: (a) The hazardous substance release occurred in U.S. navigable waters or in or on the territorial sea or adjacent shoreline of the country of which the claimant is a resident; (b) the claimant is not otherwise compensated; (c) the hazardous substance release occurred from a facility or vessel within or adjacent to U.S. navigable waters or a discharge connected with activities conducted under the Outer Continental Shelf Lands Act or the Deepwater Port Act; (d) comparable remedy for recovery by U.S. claimants is authorized by treaty or executive agreement, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants; and (e) these regulations are met.

III. Relationship of Proposed Claims Procedures to Proposed NCP Revisions

The NCP provides for the division and specification of responsibility among the Federal Government, States and political subdivisions, and Indian Tribes in response actions. It also specifies the appropriate roles for private entities. As explained previously, EPA has recently proposed revisions to the current NCP. These proposed revisions clarify the roles of the Federal Government, States and political subdivisions, and private parties as they relate to response claims authorized under sections 111(a)(2) and 122(b)(1) of CERCLA. Provisions which are contained in the 1985 NCP are in effect. Provisions which would be established by the recently proposed amendments to the NCP will take effect upon promulgation of the NCP. (Note that some provisions of SARA are self-executing and are already effective even without any revision to the NCP.)

A. Proposed Revisions to Subpart B of the NCP (Responsibility)

Subpart B of the current NCP identifies the roles and responsibilities of those who may assist or conduct response actions under the Plan. One provision of this subpart is § 300.25, entitled "Nongovernment Participation," which in part provides an elaboration of CERCLA section 111(a)(2). Section 300.25 discusses the payment of claims for necessary response costs incurred by persons as a result of carrying out the NCP and identifies the roles and

responsibilities of the private sector. (In the proposed revisions, the language of § 300.25(d) of the current NCP would be transferred to proposed § 300.700 in a new Subpart H. Other subparagraphs of § 300.25 are located at proposed § 300.185 (Nongovernmental Participation).

The recently proposed revisions to the NCP: (1) Specify that States and political subdivisions (except in the context of a settlement agreement pursuant to section 122(b)(1)) cannot file response claims; (2) clarify which requirements of the NCP must be met in order for a preauthorized response action to be consistent with the NCP; (3) clarify that certain persons (i.e., those who are not undertaking responses pursuant to sections 104 or 106 of CERCLA or for which reimbursement from the Fund will be sought) may take any action which can be taken by the "lead agency" in carrying out the response action; and (4) clarify that preauthorization represents EPA's intention to reimburse the amount of the claimant's response costs that is specified in the PDD, but only if the claimant can demonstrate that the costs incurred were reasonable and necessary and that all the terms and conditions of the PDD were met. The Agency has attempted to incorporate in this proposal, for the convenience of the reader, the NCP provisions that may logically be applied to private-party cleanups. (Hereinafter, "private-party" includes States and political subdivisions that are PRPs. "PRP private-parties" and "non-PRP private-parties" are eligible for preauthorization.) Once preauthorization is obtained, the Federal Government will continue to oversee the subsequent cleanup.

In order for claims to be awarded, the claimant must perform the preauthorized actions in compliance with the NCP. This requirement was initially established in the 1985 NCP, is contained in § 300.700 of the proposed revisions, and is included here only for the convenience of the reader. Thus, this requirement continues to apply to preauthorized response actions. The claimant must also comply with the terms and condition of the PDD and, for PRPs, the terms of any applicable consent decree. The burden of proving the claim rests with the claimant. The claimant may submit claims only in accordance with the schedule set forth in the PDD.

B. Propposed Revisions to Subpart F (Hazardous Substances Response)

Subpart F of the current NCP (redesignated as Subpart E of the proposed revision) establishes the methods and criteria for determining the appropriate extent of response for both removal and remedial actions authorized by CERCLA. The proposed revised NCP contains a number of amendments to this subpart.

1. Section 300.62 State Role

Paragraph (c) of § 300.62 of the current NCP provides that contracts and cooperative agreements with States, authorized by section 104(c)(3) of CERCLA, are not a precondition to access, information gathering, investigations, studies, or liability pursuant to sections 106 and 107 of CERCLA. State cooperative agreements are the mechanism used to allow States to take the lead in a Fund-financed response action pursuant to section 104 of CERCLA. State contracts are the mechanism used to obtain the necessary assurances when the Federal Government assumes the lead in a Fund-financed response action pursuant to section 104 of CERCLA. There is no need for a contract or cooperative agreement with respect to a response action performed by a private-party. Accordingly, EPA proposed to amend paragraph (c) to make clear that a contract or a cooperative agreement with a State (or Indian Tribe, as a result of the SARA amendments) is not a prerequisite to claims against the Fund pursuant to section 111(a)(2). However, EPA may still consult with States or Indian Tribes during the preauthorization process. These changes are currently in effect because they are merely clarifications of the 1985 NCP, or were required by the SARA amendments.

2. Section 300.67(b) Community Relations Requirements for Removal Actions

Section 300.67(b) of the current NCP states that a formal community relations plan is not necessary for removal actions unless the action is expected to extend or does extend beyond 45 days. EPA has proposed in § 300.415(n)(3) to amend this provision so that a community relations plan is not necessary unless the removal is expected to extend or does extend beyond 120 days. Community relations plans are required for removal actions that extend beyond 45 days until the revised NCP is promulgated.

3. Section 300.68(a) Remedial Action Introduction—Permit Requirements

Sections 300.68(a)(3) of the current NCP states that Federal, State, and local on-site permits are not required for Fund-financed remedial actions taken pursuant to section 104 of CERCLA or for remedial actions taken pursuant to section 106 of CERCLA. As EPA explained in the preamble to the NCP, remedial actions undertaken pursuant to other authorities (e.g., actions preauthorized under section 111(a)(2) or other private-party cleanups with subsequent cost recovery actions under section 107) are not exempt from on-site permit requirements. The rationale for permit exemption applies only to remedial actions selected pursuant to section 121(e) of CERCLA and implemented pursuant to sections 104 or 106. Accordingly, a private-party response action that is not conducted pursuant to section 106 of CERCLA, even though it receives some reimbursement through the claims process is a private-party response action and thus, in EPA's view, is subject to on-site permit requirements.

EPA has proposed in § 300.400(e) to clarify that three general categories of response activity may be conducted without an on-site permit. In addition to responses taken pursuant to sections 104 and 106 of CERCLA, actions to be undertaken by PRPs using "mixed funding" (i.e., where the remedy is selected by the Federal lead agency but the response action is preauthorized pursuant to section 122 of CERCLA) are exempt from the on-site permit requirement (see section V of this preamble). All other response actions preauthorized pursuant to section 111 will continue to be subject to Federal, State or local permit requirements. This requirement is currently in effect.

4. Section 300.68(i) Selection of Remedy

Section 121 (b) and (d) of CERCLA mandate that all remedial actions assure protection of human health and the environment. If the remedy requires that a hazardous substance, pollutant, or contaminant remain on site, section 121(d) provides for compliance with legally applicable, or relevant and appropriate, Federal and State environmental requirements (ARARs) with certain enumerated exceptions. If the remedy requires that substances be transferred off site, section 121(d)(3) of CERCLA requires that the off-site facility be in compliance with applicable law. Section 121(d)(3) also imposes requirements on units at the off-site facility.

Consistent with section 121 of CERCLA, EPA will approve remedial activities under the preauthorization process only to the extent that they are cost-effective. EPA has proposed in § 300.430(f)(3) to amend the selection of remedy requirements to conform to the statutory changes. While the proposed

amendments cannot take effect until promulgation of the NCP, section 121 of CERCLA as amended established many of these requirements by statute.

5. Section 300.68(1) Response Actions Pursuant to Section 106 and 111(a)(2) of CERCLA/Consistency with NCP

Section 300.68(1) of the current NCP sets forth the requirements that response actions pursuant to sections 106 or 111(a)(2) must meet in order to be consistent with the NCP. Since § 300.700(d)(4) of the proposed revised NCP specifies the requirements for response claims to be consistent with the NCP (see discussion above), there is no need for § 300.68(1) to also discuss response claims. In the proposed NCP revisions, therefore, EPA has deleted any reference to response claims in this subsection.

6. Section 300.71 Other Party Responses

In the November 20, 1985 revision to the NCP, EPA added § 300.71 to address response actions other than those taken pursuant to sections 104 and 106 of CERCLA. The section sets forth in some detail what is required in order for a response action conducted by a private-party to be consistent with the NCP for the purpose of cost recovery under section 107 of CERCLA. Under § 300.700(c)(3)(i) of the proposed revisions to the NCP, EPA intends that a response action will be considered to be consistent with the NCP if the person taking the response action (including claimants) complies with an order issued by EPA pursuant to section 106 of CERCLA, a consent decree entered into pursuant to section 122 of CERCLA, or the following provisions where pertinent to the particular response chosen for the particular facility:

- Section 300.150 (on worker health and safety);
- Section 300.160 (on documentation and cost recovery);
- Section 300.400(c) (1), (4), (5) and (7) (on determining need for a response action), (e) (on permit requirements), and (g) (on identification of ARARs);
- Section 300.405(b), (c) and (d) (on reports of releases to the National Response Center (NRC));
- Section 300.410 (on removal site evaluation) except paragraphs (e) (5) and (6) and the reference to listing releases in EPA's data base in (h);
- Section 300.415 (on removal actions) except for paragraphs (a)(2), (b)(2)(vii), (b)(5) and (g);
- Section 300.420 (on remedial site evaluation);
- Section 300.430 (on RI/FS and selection of remedy) except paragraph (f)(3)(iv)(F); and
- Section 300.435 (on RD/RA and operation and maintenance).

In addition, "other persons" undertaking response actions must provide an opportunity for public comment concerning the selection of the response action. A response action shall not be considered consistent with the NCP unless:

- The person taking the response action complies with the following proposed NCP provisions regarding public participation, with the exception of administrative record and information repository requirements stated therein:

—Section 300.155 (on public information and community relations);
—Section 300.415(n) (on community relations during removal actions);
—Section 300.430(c) (on community relations during RI/FS) except paragraph (5);
—Section 300.430(f)(1), (2), and (5) (on community relations during selection of remedy); and
—Section 300.435(c) (on community relations during RD/RA); or

- The person taking the response action complies with State or local requirements which provide a substantially equivalent opportunity for public involvement in the choice of the remedy.

Finally, when selecting the appropriate remedial action, any other person shall, as appropriate, consider the methods of remedying releases listed in Appendix D of the proposed revised NCP. Except for actions taken pursuant to CERCLA sections 104 or 106 or response actions for which reimbursement from the Fund will be sought, any action to be taken by the lead agency in §§ 300.415, 300.430, and 300.435 may be taken by the person carrying out the response action.

Proposed § 300.700(c) would establish requirements that claimants must meet in carrying out preauthorized response actions. Some of these requirements were set forth in the 1985 NCP, and have been restated in the revised NCP for clarity. These requirements, which are essentially unchanged in the proposed revised NCP, remain in effect. However, some of the requirements in the proposed revised NCP are different from the 1985 requirements. Most of these new requirements interpret mandates established in CERCLA section 121 which was added by the 1986 amendments. For example, the proposed revised NCP defines the process for selecting a remedy that utilizes permanent solutions and alternative treatment technologies to the maximum extent practicable, as mandated by CERCLA. Although the proposed revisions to the NCP are of course not promulgated and not legally binding, they do generally represent EPA's current views, and the Agency will generally use them as guidance until the revisions are promulgated.

Section 300.71(a)(4) of the current NCP requires certain private-parties to comply with all applicable law and also on-site permit requirements when performing response actions. EPA has proposed to clarify, in § 300.400(e) of the proposed NCP, that the requirement to obtain on-site permits applies to persons undertaking response actions which are not undertaken pursuant to sections 104, 106, or 122. In other words, section 121(e)(1) of CERCLA does not apply to response actions *reimbursed* by EPA through the authority of section 111. Because this is merely a clarification of the current NCP, this requirement is currently in effect.

Response actions by PRPs preauthorized pursuant to section 122 of CERCLA are included among the response actions performed pursuant to section 106 and are therefore governed by the same standards as section 106 (e.g., no on-site permits are required). (see Sections III.B.2, B.3 and V of this preamble.) On the other hand, all other section 111 claims (i.e., non-PRP claims) are subject to legally applicable requirements, including on-site permit requirements. However, like actions under sections 104 and 106, such actions undertaken by claimants must comply with all relevant and appropriate requirements unless certain waivers apply (§ 300.68(i)(5) of the 1985 NCP and § 300.430(f)(3)(IV) of the proposed revised NCP). The waivers are discussed in more detail under General Requirements for preauthorization applications (See IV.D.).

Section 300.71(a)(4) of the current NCP has itself been partially superseded by section 121 of CERCLA, which is self-executing and therefore already effective. This new provision of the statute is more explicit with regard to the substantive standard that a particular cleanup should achieve. The NCP revisions proposed in § 300.700(d)(4)(ii) make clear that response claimants are required to adhere to these new requirements.

Additionally, EPA has proposed to amend § 300.71 to remove paragraph (c). Section 300.71(c) provides that organizations may be "certified" by EPA to conduct site response actions. The provision states that:

> Certification is not necessary for, but may facilitate, Fund preauthorization under § 300.25(d) and lead agency evaluation of the

adequacy of proposed response actions. (50 Federal Register 7978, November 20, 1985.)

In proposing the certification provision, the Agency stated:

> The advantage of certification is that the organization need only submit the written request demonstrating its qualifications one time rather than each time it requests preauthorization. (50 Federal Register 5870, Feb. 12, 1985.)

In developing the proposed revised NCP, EPA considered elaborating on the requirements for certification and the benefits that certification would confer. Upon further reflection, however, the Agency believes that certification would not be a useful tool in the claims process. The capability of applicants to perform proposed response actions must necessarily be evaluated on a case-by-case basis, taking into account the nature and scope of the proposed response. In addition, the qualifications of the applicant's personnel, as well as the sum total of the applicant's commitments and obligations, must be evaluated each time a preauthorization application is filed, regardless of whether the applicant is "certified." Finally, the Agency is concerned about use of certification as a marketing tool and about the potential for public misperception that certified firms are working on behalf of EPA. Accordingly, the Agency has not proposed a provision in the revised NCP comparable to that found in § 300.71(c) of the 1985 NCP.

By proposing to remove the certification provision in § 300.71(c), EPA is not seeking to discourage private entities from undertaking response actions. This deletion means only that EPA will evaluate capabilities on a case-by-case basis. Of course, entities that have already been preauthorized for one response action may incorporate the previous application by reference, which will aid the Agency in evaluating the applicant's capabilities. Effective with the proposal of the revised NCP on December 21, 1988, EPA, as a matter of policy, will not process requests for certification.

IV. Preauthorization

In accordance with section 111(a)(2) of CERCLA and § 300.25(d) of the current NCP (section 300.700(d) of the proposed revised NCP), all response actions must be approved in advance by EPA through the preauthorization process in order for a claim to be submitted to the Fund. The Agency will not allow a claim for a response action unless the response action has been preauthorized by the Agency. Claims for response actions that were not preauthorized will be returned without a determination of the merits of such claims. "Preauthorization" by EPA represents the Agency's intention that if response actions are taken in accordance with the PDD, and costs are reasonable and necessary, reimbursement will be made from the Fund, subject to any maximum amount of money set forth in the PDD. Preauthorization is not a contract between EPA and the claimant, nor does the claimant become an agent or authorized representative of EPA. Approval of an application for preauthorization does not detract from the lead agency's authority to review the adequacy of work at the site, nor does it override other terms of any settlement agreement between the United States and the PRP(s). Preauthorization is intended to benefit only the applicant and EPA. It extends no benefit to nor creates any right in any third party.

This section describes the existing statutory and regulatory basis for preauthorization and explains the Agency's response priorities, the procedural requirements to obtain preauthorization, the criteria EPA will use in evaluating applications for preauthorization, and the policy on preauthorization of operable units and response stages. The next section will discuss claims accompanying settlements with PRPs.

A. Basis for Requiring Preauthorization for Response Claims

The preauthorization requirement is based on the approval and certification provision in section 111(a)(2) of CERCLA, which states that the Fund may be used for:

> Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan * * * *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official.

This statutory provision contemplates Agency review of the necessity and priority of response claims before authorizing use of the money in the Fund for such claims. In accordance with the statute, § 300.25(d) of the NCP and § 300.700(d) of the proposed revised NCP provide that persons who would submit claims to the Fund for response actions must notify EPA and obtain EPA's prior approval before undertaking response activities.

Section 300.25(d) of the 1985 NCP was upheld in *State of Ohio* v. *U.S. EPA*, 838 F.2d 1325 (D.C. Cir., 1988), and is not reproposed. It is merely restated in § 307.22(a) of this Regulation in order to make Part 307 readable without extensive cross references to other regulations.

Preauthorization achieves four important objectives. First, it enables the Agency to fulfill its role as Fund manager by ensuring appropriate uses of the Fund. In this way, Fund money available for claims is expended in accordance with environmental and public health priorities. Because the number of incidents that may give rise to claims is large, and because remediating a single incident can involve considerable expense, it is essential that the Agency screen possible claims to determine the importance of the response that may be undertaken relative to other response needs.

Second, preauthorization of response actions reduces the likelihood that responses themselves will create environmental hazards. The Federal Government has considerable experience in performing and overseeing cleanup activities. This experience has shown that poorly-handled cleanup efforts can cause other environmental damage or can present risks to workers and the surrounding population. Moreover, nongovernmental persons may not be fully aware of statutory and regulatory requirements that apply to proposed activities. Through the preauthorization process, EPA can review a proposed response plan and either obtain necessary modifications to a plan or, if it appears desirable, replace the plan for nongovernmental response with one in which the Government would become involved directly in the response. Additionally, the NCP requires that persons who wish to undertake a response action demonstrate the necessary technical expertise before the request is approved.

Third, preauthorization ensures that a claimant is aware of, and will carry out a response action in a manner consistent with the NCP.

Fourth, preauthorization gives the claimant an assurance that if the response is conducted in accordance with EPA's approval and the costs are reasonable and necessary, monies may be had from the Fund.

B. Fund Priorities

EPA will approve a response action through the preauthorization process only if the response action is of sufficient priority to merit Fund expenditure. The Agency's top priority, as set forth in section 104(a)(1) of CERCLA, is response to releases of hazardous substances that pose a threat to public health. Accordingly, the Agency has formulated priorities that

take into consideration the potential risk of one release when compared with another.

EPA's Superfund Comprehensive Accomplishments Plan (SCAP) comprehensively identifies the plan for each fiscal year's activities and the interactions of the Superfund removal, remedial, enforcement, community relations, and other program components. The SCAP contains: targets for removals at NPL and non-NPL sites; a reserve for unanticipated removal actions; projected remedial, enforcement, and community relations activities by site name, State, activity type (e.g., investigation, design, construction), expected start date, and estimated cost; and tentative lead agency assignments. The SCAP is available from EPA Headquarters in Washington, DC, or any EPA Regional Office at the beginning of each fiscal year.

The Agency will consider all applications for preauthorization against the alternatives of an enforcement action or conducting the remedial action through a cooperative agreement or a contract. EPA will approve a response action by a private-party when it determines that such a response is the best available means to address a release for the site at issue.

Releases may occur at sites both on and off the NPL. Fund-financed remedial actions may be taken only at NPL sites; however, removal actions may be taken both at NPL and non-NPL sites. For this reason, EPA proposes to adopt two approaches to determine whether to approve response actions under the preauthorization process: one for removal actions, and a second for remedial actions.

1. Removal Claims

The release or threat of release of a hazardous substance may be accompanied by an acute threat of direct human contact and/or fire or explosion. Assessing the degree of risk and the necessity for a removal action usually requires an on-site inspection by the lead agency. Undertaking such an inspection as a precondition to approving a response by a third party may unduly delay cleanup and increase the danger to the environment. EPA will not approve removal actions under the preauthorization process where the need for immediate action does not allow sufficient time for site inspection or for the data collection and evaluation necessary to evaluate a preauthroization request. Potential claimants who may wish to be preauthorized to respond to a release are advised to contact the National Response Center (NRC) (800–424–8802 or 554–1400 in the Washington, DC, metropolitan area), as provided in § 300.405(b) of the proposed revised NCP (§ 300.63(b) of the 1985 NCP), and as would be required by proposed § 300.700(d), to request advice on whether there is sufficient time for the preauthorization process. (This notification is separate and distinct from the CERCLA section 103 requirement (i.e., any person in charge of a vessel or a facility must notify the NRC of a hazardous substance release if certain specified conditions are met)).

The NRC may direct the potential claimant to the U.S. Coast Guard Marine Safety Office or Captain of the Port or to the emergency response program in the EPA Regional Office that may be assigned lead responsibility for the release. The lead agency will determine if an immediate governmental response is necessary. Alternatively, the lead agency may determine that sufficient time is available to process a preauthorization application. In such a case, the potential claimant must comply with the requirements for obtaining preauthorization. This policy is designed to: (1) Provide an immediate response action where the conditions warrant such a response; and (2) protect the health and safety of the surrounding population and those who would be involved in cleanup.

2. Remedial Claims

Section 105(a)(8)(B) of CERCLA requires that the President (EPA by delegation) establish the NPL to identify priorities among releases and potential releases. Consequently, the NPL serves as a basis to guide the allocation of Fund resources among releases. Section 300.425(b)(1) of the proposed revised NCP (§ 300.66(c)(2) of the 1985 NCP) provides that only those releases included on the NPL will be eligible for Fund-financed remedial action. The purpose of this restriction is to ensure that limited Fund monies are used only at sites that have been identified as posing the greatest potential threats to human health and the environment. (The purpose is *not* to make the NPL the exclusive list of necessary remedial and enforcement actions.) Therefore, the Agency will consider applications for preauthorization of remedial actions only for releases that are on the NPL. Inclusion on the NPL is *not* a precondition to removal actions, remedial planning activities, non-Fund-financed remedial actions, or any type of Agency action under section 106 of CERCLA.

For sites that are on the NPL, EPA will consider applications for pre-authorization of remedial actions where the Agency does not in the near future intend: (1) To bring an enforcement action against responsible parties; (2) to initiate a Fund-financed response through contracts or cooperative agreements with States; or (3) where the Agency finds it desirable to allow claims in addition to one or more of the above mechanisms (e.g., mixed funding). EPA will also weigh whether preauthorization of a response action will facilitate meeting the schedules for initiating RI/FSs and remedial actions mandated by section 116 of CERCLA.

C. Preauthorization of Operable Units and Response Stages

As defined in § 300.5 of the proposed revised NCP (described in § 300.68(c) of the 1985 NCP), an operable unit is a discrete action that comprises an incremental step toward comprehensively addressing site problems. The definition contained in today's proposed rule at § 307.13 also states that such a discrete portion of a remedial response acts to either manage migration or to eliminate or mitigate a release or pathway of exposure. While EPA may approve operable units, the Agency may require a commitment to finish site cleanup, and in some instances will not reimburse claims for operable units until the entire site is cleaned up. This is to ensure that projects, once initiated, are completed in a timely manner. Additionally, EPA may approve an application for preauthorization of stages (e.g., RI/FS, design, construction) of a response or an operable unit. Preauthorization of stages may be advantageous when subsequent actions and costs are dependent upon the findings of a previous stage.

D. Requirements for Preauthorization Applications

EPA today proposes that an applicant satisfy the requirements set forth in §§ 307.20, 307.21 and 307.22 in order to obtain EPA's preauthorization. These provisions set forth those who are eligible to file CERCLA response claims (see II.C.). They also define eligible claims and specify the elements that must be addresssed in an application for preauthorization.

1. Eligible Claims

There are four general requirements in order for costs to be eligible for reimbursement: the response action must be preauthorized by EPA, the costs must be incurred for activities within the scope of such preauthorization, the response action must be consistent with the NCP, and the costs incurred must be necessary response costs.

(a) Necessary Costs. In order to be reimbursed from the Fund, the applicant must demonstrate that proposed response costs are "necessary response costs." In order for EPA to consider costs to be necessary, they must be: (1) Required (based upon the site-specific circumstances), (2) reasonable (nature and amount do not exceed that estimated or which would be incurred by a prudent person), (3) allocable (incurred specifically for the site at issue), and (4) otherwise allowable (consistent with the limitations and exclusions under the appropriate Federal cost principles). Hereinafter, "necessary response costs" shall be used to refer to costs which are required, resonable, allocable and allowable. EPA will issue guidance to prospective claimants on necessary response costs.

Section 111(a)(2) of CERCLA authorizes the Fund to reimburse claimants only for "necessary" response costs. This limitation is distinct from and does not apply to cost recovery actions initiated by the government under CERCLA section 107. In section 107 actions, the United States, States, and Indian Tribes may recover "all" response costs incurred in a manner not inconsistent with the NCP.

The applicant must justify in the application for preauthorization any proposal to perform an activity either in-house or to contract it out, and must describe plans to conduct all procurement transactions in a manner that: ensures to the maximum practicable extent, open and free competition; does not unduly restrict or eliminate competition; and provides where applicable for the award of contracts to the lowest responsive, responsible bidder, where selection can be made principally on the basis of price.

Necessary response costs may include costs incurred for the payment of contractor claims. Unless approved in advance by EPA, necessary response costs will not include costs incurred under construction contracts that do not contain a differing sites conditions clause as provided in proposed § 307.21(g). In addition, where the Fund has been used to pay the cost of a response action, EPA will pay no other claim for the same cost from the Fund.

Proposed § 307.21(c) would authorize reimbursement of expenses incurred by a claimant as a result of the settlement of a contractor claim. It would also allow reimbursement of an award by a third party of such a claim to the extent that EPA determines that the following conditions are met. First, the contractor claim must arise from work that is preauthorized and that is within the scope of the contract at issue. Second, the contractor claim must be meritorious (i.e., the contractor has demonstrated the requisite facts to establish the claimant's liability and the contractor's legal right to the claimed costs). Third, the contractor claim cannot be caused by the mismanagement of the claimant (e.g., errors and omissions in the plans and specifications, impact costs caused by defects). Fourth, the contractor claim cannot be caused by the claimant's vicarious liability for the improper actions of others (e.g., liability for the actions of others that the claimant must accept as a part of his/her general management responsibility). Fifth, the claimed amount must be reasonable and necessary. Sixth, the CERCLA claim for the amount of the contractor claim must be filed within five years of completion of the preauthorized activities. Seventh, payment of the contractor claim will not result in total payments from the Fund exceeding the amount that was preauthorized. The claimant has the burden of proof in substantiating the allowability of settlements, arbitration awards, and judgments.

An award by a third party of a contractor claim should include: (i) findings of fact; (ii) conclusions of law; (iii) allocation of responsibility for each issue; (iv) basis for the amount of award; and (v) the rationale for the decision.

Proposed § 307.21(f) provides that expenses incurred by a claimant for the payment of a person while such person is on the "List of Parties Excluded from Federal Procurement or Non-Procurement" shall not be reimbursable from the Fund unless the claimant obtains approval from EPA prior to incurring the obligation. The "List of Parties Excluded from Federal Procurement or Non-Procurement" is available as a monthly subscription through the Government Printing Office (Order # 722-002-00000-6). Copies of this list are also available from EPA's Office of Compliance. EPA may approve the use of such persons in a manner not inconsistent with 40 CFR part 32.

Proposed § 307.21(g) would require claimants to include a differing sites conditions clause in construction contacts as a precondition to reimbursement, unless EPA waives the requirement. Such clauses prevent firms competing for contracts from inflating their bids to account for contingencies such as differing site conditions. If the applicant does not propose the use of a differing site conditions clause equivalent to that in § 307.21(g), he/she should fully explain why this is appropriate in the application for preauthorization.

2. Elements of the Application for Preauthorization

A potential claimant must seek preauthorization by completing an application for preauthorization. A preauthorization application form, available for EPA, must include the following information, where applicable: (1) The location of the release or threatened release; (2) the type and quantity of hazardous substance, pollutant, or contaminant; (3) a description of the surrounding population and/or environmental risk; (4) any identification and investigation of PRPs; (5) a description of the proposed cleanup or investigation or evaluation actions and how such actions would be consistent with the NCP; (6) the applicant's capabilities (including financial capability) to perform the proposed activities; (7) evidence of consultation with the State on the proposed action; (8) provisions for long-term operation and maintenance; (9) projected costs; and (10) proposed project management, contracting procedures and proposed procedures for reporting to EPA.

The application is organized in a manner to enable EPA to determine whether: (1) It is appropriate to authorize a response under CERCLA; (2) the proposed response action can be carried out in manner consistent with the NCP; (3) proposed costs are, in the meaning of section 111(a)(2) of CERCLA, "necessary response costs;" and (4) the proposed procedures are consistent with sound business judgment and good administrative practices.

(a) Appropriate Response Action. As stated above, the applicant must state the nature and extent of the release or threat of release. The applicant should be guided by § 300.400(a) of the proposed revised NCP (§ 300.61(a) of the 1985 NCP) in determining whether a response to a release or threat of release is appropriate and authorized by CERCLA. Further, in determining the need for and in planning or undertaking a response action, the applicant must, to the extent practicable, comply with the requirements of § 300.400(c) (1), (4), (5) and (7) of the proposed revised NCP (§ 300.61(c) (1), (4), (5) and (7) of the 1985 NCP). These provisions require that the applicant: (1) Be capable of engaging in a prompt response when authorized; (2) be sensitive to local community concerns; (3) consider using treatment technologies; and (4) encourage the involvement and sharing of technology by industry and other experts. For remedial actions, the applicant should be guided by § 300.420 of the proposed

revised NCP (§ 300.66(a) of the 1985 NCP) in evaluating releases or threats of release.

(b) Potentially Responsible Parties. If EPA previously notified the applicant that he/she was a PRP pursuant to section 107 of CERCLA, the applicant must disclose this fact to EPA. The applicant must also disclose whether he/she has reason to believe, without regard to any potential defenses that may be available under section 107(b), the he/she may be:

(1) The owner and operator of a vessel or a facility;

(2) Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of;

(3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance; or

(4) Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, or incinerator vessels or sities selected by such person, from which there is a release, or a threatened release that causes the incurrence of response costs, or a hazardous substance.

If the following conditions are met, an approved preauthorization application will be deemed invalid and any subsequent claim will be denied in total: (1) The applicant is a person previously notified by EPA that he/she is a PRP and that applicant does not disclose this information on his/her application for preauthorization, and (2) EPA subsequently determines that the applicant is a potentially liable party under section 107 of CERCLA. Similarly, if an applicant has reason to believe that he/she may be a person as described above and does not disclose this information on his/her application for preauthorization, and EPA subsequently determines that the applicant is a potentially liable party under section 107 of CERCLA, an approved preauthorization application will be deemed invalid and any subsequent claim will be denied. In either case, withdrawal of preauthorization will be preceded by written notice from EPA. The procedures for preauthorizing PRPs are explained in section V of this preamble.

The applicant must list all known PRPs and any contacts with and replies by such parties. If PRPs are unknown to the applicant, any efforts undertaken by the applicant to locate and identify PRPs should be described.

(c) Proposed Response Action. The applicant must describe the proposed response action, explain why the actions are necessary and how they are consistent with the NCP, and provide a schedule for major response activities.

(1) Requirements for Removal Actions. Prior to applying for preauthorization for a removal action, the applicant must comply with the requirements of § 300.410 of the proposed revised NCP (§ 300.64 of the 1985 NCP) regarding preliminary assessments for removal actions, with the exception of §§ 300.410(e) (5) and (6), and (h) of the proposed revised NCP (§§ 300.64(c) (4) and (5), and (e) of the 1985 NCP). The applicable subsections require the applicant, as appropriate, to: (1) undertake a preliminary assessment as promptly as possible to evaluate the nature and extent of the actual or threatened release; (2) consider information readily available and make a site visit if necessary; and (3) determine the impact on natural resources and notify the appropriate trustee. The applicant will determine, based on the exigency of the situation, whether a preliminary assessment is necessary. The applicant will be guided by § 300.415 of the the proposed revised NCP (§ 300.65 of the 1985 NCP) in determining the appropriate extent of action required to mitigate the actual or threatened release and shall consider the factors contained in § 300.415(b)(2) of the proposed revised NCP (§ 300.65(b)(2) of the 1985 NCP) in proposing a response. However, §§ 300.415(j) and 300.415(k) of the proposed revised NCP (§§ 300.65(f) and 300.65(h) of the 1985 NCP), which concern removal actions pursuant to sections 104 and 106, apply to response claims only if they are preauthorized in the context of administrative orders or consent decrees reached pursuant to section 122.

(2) Requirements of Studies and Remedial Planning. Persons interested in responding to a release or threat of release may request preauthorization to conduct a remedial investigation (RI) or feasibility study (FS). The purpose of an RI is to determine the nature and extent of the problem presented by the release. The purpose of an FS is to define the objectives of the response action, using data from the RI, and to develop and analyze remedial action alternatives. Applicants for RI/FS preauthorization must submit a plan detailing how the RI/FS will be conducted. In developing that plan, the applicant will be guided by the provisions contained in § 300.430(a)(2) of the proposed revised NCP (§ 300.68(d) of the 1985 NCP), which defines the components of an RI/FS. In the revision, to the NCP, EPA has proposed that each applicant design his/her plan to assure compliance with the following provisions of § 300.430 (note: corresponding sections of the 1985 NCP are noted in parentheses):

- Section 300.430(b)(5) (300.68(k)) on sampling and analysis plans.
- Section 300.430(d)(2) (300.68(e)) characterizing the release;
- Section 300.430(e) (1)–(6) (300.68(f)) on the development of alternatives;
- Section 300.430(e)(7) (300.68(g)) on screening of alternatives;
- Section 300.430(e)(9) (300.68(h)) on detailed analysis of alternatives;
- Section 300.430(e)(7)(iii) (300.68(i) except for paragraph (iv), regarding waivers) on selection of the remedy.

In general, EPA does not anticipate preauthorzing private-parties to conduct an RI/FS unless such parties also agree to implement any response action that EPA may subsequently determine is required at the site. This is because preauthorization will prove too burdensome for the relatively small amount of money associated with such studies and the short time-frames within which the RI/FS is gennerally needed will not permit protracted negotiations. Additionally, section 104(a)(1) of CERCLA imposes new requirements on RI/FSs conducted by PRPs (see section V of this preamble for special requirements for PRPs).

(3) Requirements for Remedial Actions. Once a potential claimant has decided on a proposed remedy or chosen to implement the remedy selected by EPA, he/she may seek preauthorization to complete that remedy. EPA recommends that the applicant develop his/her proposed remedy in accordance with § 300.430 of the revised NCP (§ 300.68 of the current NCP). An RI/FS is generally required at any site where an expenditure from the Fund for remedial work will be authorized. Under the proposed revised NCP, alternative remedies will have to be: developed in accordance with § 300.430(e) (§ 300.68(f) of the 1985 NCP), screened in accordance with § 300.430(e)(7) (§ 300.68(g) of the 1985 NCP), and analyzed in accordance with § 300.430(e)(9) (§ 300.68(h) of the 1985 NCP). The proposed remedy must also have been selected from the alternatives in accordance with proposed § 300.430(f)(3) (§ 300.68(i) except for the waivers in paragraph (iv) of the 1985

NCP). The applicant must also have considered, as appropriate, the methods of remedying releases as specified in proposed Appendix D (§ 300.70 of the 1985 NCP) (except for Appendix D, paragraph (g) (§ 300.70(e) of the 1985 NCP) on relocation, which should be coordinated pursuant to § 300.175(b)(3)). The types of remedial actions that are generally appropriate in particular situations are listed in proposed Appendix D (§ 300.68(j) of the 1985 NCP). Preauthorization may be sought with respect to individual operable units.

If the applicant proposes a remedy other than that selected by EPA for the site, the application for preauthorization shall describe, as appropriate, whether and how the proposed remedy: (1) Differs from the one selected by EPA; (2) is cost-effective; (3) mitigates and minimizes future risks; (4) improves the reliability of the remedy; and/or (5) utilizes new or innovative technology. If the applicant proposes a remedy other than the remedy selected by EPA, the Agency will evaluate the information submitted and modify its remedy, if appropriate, consistent with the procedures proposed in Subpart E of the proposed revision to the NCP. If EPA has not selected a remedy, the application for preauthorization shall describe, as appropriate: (1) The proposed remedy; (2) how the remedy achieves protection of public health and welfare and the environment and complies with Federal public health or environmental ARARs; (3) whether the remedy is cost-effective; (4) how the remedy mitigates and minimizes future risks; (5) the reliability of the remedy; (6) whether the remedy utilizes new or innovative technology; and (7) whether the remedy employes treatment that reduces toxicity, mobility, or volume of the hazardous substances. (See EPA's "Superfund Remedial Design and Remedial Action Guidance," EPA/OSWER Directive 9355.0-4A, June 1986, for more details.)

As discussed above, private-party response actions are not exempt from other applicable Federal, State, and local laws. Thus, a private-party response action (other than those preauthorized in the context of an administrative order or a consent decree performed pursuant to section 106/122 of CERCLA) will be preauthorized only if it will comply with all legally applicable requirements, including on-site permit requirements. The response action also must comply with environmental laws that, although not applicable, are relevant and appropriate to the situation at hand, unless the waivers of section 121 apply. Section 300.700(d)(3) of the proposed revised NCP clarifies these requirements. Similarly, certain exemptions proposed in § 300.430(f)(3)(iv) (which is proposed to be revised pursuant to section 121 of CERCLA) would apply to private-party response actions only (except for the Fund-balancing waiver in subparagraph (F)). The specific exemptions are: the selected alternative is an interim measure not a final remedy (subparagraph (A)); all alternatives that meet the requirements would result in greater risk to human health and the environment (subparagraph (B)); no alternative that meets the relevant and appropriate requirements is technically practical (subparagraph (C)); the alternative that does not attain ARARs will attain an equivalent standard of performance (subparagraph (D)); and, with respect to State ARARs, the State has not consistantly applied the standard (subparagraph (E)). The sixth waiver (subparagraph (F)) applies to Fund-financed response actions only remedy.

As stated earlier, for most sites listed on the NPL, EPA intends to pursue CERCLA section 106 actions against and, if possible, to enter into consent agreements pursuant to CERCLA section 122 with parties responsible for the release, or enter into contracts or cooperative agreements with States for response actions. EPA and the States have already initiated response or enforcement actions at many of these sites, and it is unlikely that EPA will approve through the preauthorization process a private-party to implement remedial design and construction already underway through a consent decree or order or a cooperative agreement. If the applicant seeks preauthorization in this circumstance, he/she must demonstrate special or unique capabilities to implement the selected remedy.

(d) *Other Requirements for Consistency with the NCP.* Section 300.700(c)(3) of the proposed revised NCP (see III.A.) sets forth the requirements in order to be consistent with the NCP. The discussion above highlights the requirements related to specific types of response actions. Other requirements relate to worker/community health and safety and community relations.

(1) Health and Safety. In order to be consistent with the NCP, § 300.700(c) of the proposed revised NCP would require compliance with § 300.150 of the proposed revised NCP (§ 300.38 of the 1985 NCP). Today's proposed rule would require that applicants provide evidence of adequate provision for worker training, health and safety, and the safety of the public in order to satisfy this requirement. While a site safety plan is not required in advance of submitting an application for preauthorization, the applicant must demonstrate familiarity with "OSHA Safety and Health Standards: Hazardous Waste Operations and Emergency Response" (29 CFR part 1910, 51 FR 45654 *et seq.*, December 19, 1986).

If the site safety plan is not included with the application for preauthorization, the applicant must specify when, in advance of site work, the plan will be completed and submitted to EPA. Section 300.150(a) of the proposed revision to the NCP reiterates that private employers are directly responsible for the health and safety of their own employees.

The applicant should attach, or describe plans to develop a spill/volatile emissions contingency plan that will address the protection of area residents from the physical, chemical and/or biological hazards particular to the release or the proposed response action.

(2) Community Relations. In order to be consistent with the NCP, § 300.700(c) of the proposed revised NCP would require compliance with §§ 300.155, 300.415, 300.430, and 300.435 of the proposed revised NCP, or substantially equivalent State or local requirements. Applications for preauthorization must address the appropriate provisions regarding public participation. Community relations plans developed for preauthorized response actions are to be in accordance with the relevant sections of the NCP. The applicant must demonstrate, through information contained in the application for preauthorization, a thorough knowledge of applicable EPA guidance, and describe the applicant's proposed role in community relations during the conduct of the response action. The discussion below provides information on the requirements for public participation for removal and remedial actions. Note that special provisions apply to response actions to be conducted by PRPs.

In the case of removal actions taken pursuant to proposed § 300.415 (§ 300.65 of the current NCP) or other short-term actions, a formal community relations plan is not necessary. However, for removal actions expected to extend beyond 45 days (proposed to be 120 days in the proposed revised NCP), the applicant must agree to develop a formal community relations plan upon EPA's approval of the response action

and prior to the initiation of field work. If the following conditions are satisfied, the claimant must develop a formal plan: (1) EPA approves a response action which is expected to extend beyond 45 days (120 days under the proposal), and (2) it becomes apparent that a brief response action will require more than 45 days (120 days under the proposal). An applicant need not prepare a new plan if a detailed current plan already exists.

Prior to commencing field activities for an RI, a community relations plan must be developed by the applicant. After completion of a final draft FS, the applicant shall provide for public review of the study for at least 30 days. An applicant shall also provide an opportunity for a public meeting at or near the facility. A transcript of the meeting shall be compiled, and the transcript shall be available to the public. Once a plan is adopted, it shall be available to the public before the remedial action is commenced. The plan shall include a discussion of any significant differences from the proposed plan. Applicants requesting preauthorization for remedial actions must demonstrate familiarity with any community relations plan already developed for the site, and must demonstrate the ability to obtain public comment and keep the public informed throughout field activities. If conditions require reconsideration of major aspects of the remedy, the applicant should describe the process proposed for public review and comment.

Response actions preauthorized in the context of administrative orders or consent decrees will be governed by the provisions of § 300.67 regarding actions pursuant to CERCLA section 106. As proposed in § 300.430(c)(3) (§ 300.67(c) of the current NCP), PRPs may participate in aspects of the community relations program at the discretion and with oversight by the lead agency.

Applicants should consult EPA's *Community Relations in Superfund: A Handbook* (EPA/OSWER Directive 9230.0-3B, June 1988) for more details. PRPs should consult Chapter 6 of the *Handbook* and subsequent clarifying guidance contained in "Community Relations During Enforcement Activities and Review of Administrative Record" (EPA/OSWER Directive 9836.0-1A, November 1988). Both the Handbook and the Guidance are available through EPA Regional Offices.

(e) Schedule of Response Activities. Proposed § 307.22(b) of this Regulation would also require that the applicant supply a proposed schedule of response activities. The purposes of the schedule are to ensure: (1) The timely initiation and completion of the response action consistent with section 300.400(c)(1) of the proposed revised NCP (section 300.61(c)(1) of the 1985 NCP); (2) that the applicant understands the major tasks associated with the proposed response action; and (3) that the applicant has allowed sufficient time for response activities, including necessary reviews by EPA. The format for this information may be a milestone chart or timeline that lists the major tasks/activities. The time may be expressed in weeks or months, at the option of the applicant, and may be reflect elapsed time (e.g., 6 months to complete task A) rather than a date certain, due to uncertainties regarding the effective date of preauthorization. At a minimum, the applicant must supply the point following preauthorization at which the response action will be initiated (e.g., contractor on-board within 3 months) and the point at which the response action will be completed (e.g., completion 54 months from start-up).

(f) Capabilities. Just as section 104(d)(1) of CERCLA requires that the President determine whether a State, political subdivision, or Indian Tribe is capable of carrying out a given action before entering into a contract or cooperative agreement, EPA believes it reasonable and appropriate to include a demonstration of technical expertise as one of the requirements for obtaining preauthorization to conduct a response action. Section 300.700(d)(4)(i) of the proposed revised NCP (§ 300.25(d)(5) of the current NCP) requires that all persons filing an application for preauthorization demonstrate their technical and other capabilities to respond.

The application for preauthorization should demonstrate, in addition to a knowledge of the NCP and EPA procedures: the applicant's engineering, scientific, or other technical expertise necessary to evaluate the appropriate extent of remedy; the ability to handle any on-site emergency action; the ability to oversee the design of remedial actions; the ability to manage any necessary contracts; the ability to manage the sampling plan; the ability to furnish continuous contruction oversight; and the financial ability to implement the removal or remedial action.

The applicant may demonstrate technical capabilities in part through: (1) Previous experience in hazardous site cleanups; (2) management of other types of government or private contracts or similar scope, magnitude and complexity; or (3) previous experience that required similar technical and managerial capabilities. The applicant may demonstrate financial capability through the inclusion of audited financial statements or balance sheets and tax returns or other evidence that the applicant has the necessary resources to carry out and complete the proposed response action. As appropriate, the applicant may propose a financial bond, letter of credit, or other assurance of completion.

(g) Consultation with State Agencies and Indian Tribes. In order to accomplish timely coordination and consultation with the affected State(s) and Indian Tribe(s), the applicant seeking preauthorization of a remedial action is encouraged, at the time the application for preauthorization is filed, to obtain a letter signed by the designated State or Indian Tribe hazardous waste official that: (1) Concurs with the proposed action; and (2) assures the cooperation of the State or Indian Tribe in the proposed actions. This will facilitate EPA's processing of the application for preauthorization by reducing or eliminating the need for EPA to consult with the affected State(s) or Indian Tribe(s) during its review of the applications for preauthorization of remedial actions. If the applicant does not supply a letter from the State or Indian Tribe official, documentation must be supplied that every reasonable effort was made to obtain the cooperation of the State or Indian Tribe.

(h) Future Maintenance. Section 104(c)(3) of CERCLA requires the assurance of future maintenance of response actions. Section 300.430(e)(7)(iii) of the proposed revision to the NCP (§ 300.68(g)(1) of the current NCP) requires that the lead agency consider costs for each alternative, including operation and maintenance costs. While section 104 does not apply to private-party response actions, EPA does not believe it is appropriate to approve a response action through the preauthorization process unless long-term operation and maintenance will be undertaken and/or paid for by a party other than EPA.

The applicant may satisfy long-term operation and maintenance activities, if applicable, in one of two ways: (1) A bond or other financial assurance, satisfactory to EPA, sufficient in amount to cover the costs of necessary long-term operation and maintenance; or (2) a written assurance from the State to provide for long-term operation and maintenance of the response action. Pursuant to sections 104(c)(3) and (6) of CERCLA, in the case of ground- or surface-water contamination, the remedial action must include measures necessary to restore ground- and

surface-water quality and provide for the operation of such measures for up to 10 years. It is EPA policy to pay operating costs necessary to ensure that all or a portion of the remedy is operational and functional (i.e., shakedown costs), only if such costs are incurred within one year of the completion of the remedy or a portion of the remedy. The Agency will not pay for the long-term costs (i.e., operation and maintenance) necessary to maintain the effectiveness of a response measure following completion in either Fund-financed or claims situations.

(i) Projected Costs. Section 307.22(b) of the proposed rule would require that applications for preauthorization contain projected costs of response activities. The applicant may demonstrate the validity of projected costs on the basis of: (1) Cost estimates from firms qualified to provide goods or services; (2) competitive procurements for similar activities, if the prices were determined on an open market; or (3) documentation of market prices (e.g., price sheets) based on similar procurements. The proposed rule would also require that the applicant base such projected costs on actual anticipated costs without a contingency for unanticipated site conditions. (See Section IV.D.—necessary response costs.)

(j) Management, Contracting and Reporting. The application for preauthorization should describe in detail the management structure that the applicant proposes to use to implement the project and control financial matters. The project management structure should include an organizational and functional statement (complete with chart) to assist EPA in determining the level of management necessary for the project. The structure should demonstrate the relationship among the following parties (if relevant): the applicant, the technical committee or advisors, the project manager, the Trustee, and the contractors/subcontractors.

The applicant should describe in detail proposed contracting procedures that are in accordance with sound business judgment and good administrative practice and that are consistent with the requirements for eligible costs (see Section IV.D.1.). The applicant should fully explain the type of contract proposed for specific activities and proposed procedures to settle and satisfactorily resolve all contractual and administrative issues arising out of agreements he/she may enter into to perform preauthorized response actions. The applicant should describe proposed procedures for: the issuance of invitations for bids or requests for proposals; selection of contractors; the award of subcontracts; a system or strategy to minimize change orders and prevent contractor claims; and procedures for settlement of protests, claims disputes, and other related procurement matters. The applicant should also describe how he/she proposes to handle contracts to assure that subcontracted work is performed in accordance with the terms, conditions, and specifications of such contracts. EPA will issue guidance on procurement and other management practices that may be adopted by the applicant to help assure that costs incurred are eligible for reimbursement.

Section 300.160 of the proposed revisions (§ 300.69 of the current NCP), would require documentation of all phases of response actions. The applicant must demonstrate, through proposed reporting, oversight, and recordkeeping procedures, a knowledge of how the Superfund program operates. EPA recommends that the applicant utilize a flow diagram or other chart to demonstrate critical activities, processes, the relationship of activities and processes to each other, and key decision points. Reporting and oversight are key to the satisfactory management and monitoring of a project. The applicant's plan should show: (1) The number and frequency of reports to EPA and the State detailing progress at the site; (2) documents that the applicant proposes to submit to EPA prior to undertaking key steps (e.g., requesting proposals, contract awards, or analysis of lab results); (3) reports that document conditions at the site (e.g., actions taken, resources committed, problems encountered, or recommendations for further actions); and (4) documents that will be retained by the applicant for ten years or until EPA completes cost recovery. Applications submitted by PRPs may rely on the reporting requirements contained in the most recent draft settlement agreement.

In order to establish that costs are allocable (see "necessary response costs") the claimant should propose a financial management system that consistently applies generally accepted accounting principles and practices. At a minimum, the system must include an accurate, current, and complete accounting of all financial transactions for the project (complete with supporting documents) and a systematic method to resolve audit findings and recommendations. Proposed section 307.32(m) provides for the adjustment of the claimed amount if the claimant fails to maintain records, documents, and other evidence of claimed costs in accordance with generally accepted accounting principles and practices consistently applied.

EPA will approve or modify the applicant's proposed management, procurement and reporting plans and may: (1) Provide additional oversight as deemed appropriate, pursuant to proposed § 300.400(h) (§ 300.61(d) of the 1985 NCP); and (2) condition preauthorization on such requirements as it may deem necessary, pursuant to § 307.23(c) of the proposed rule.

V. Preauthorization Under CERCLA Section 122

Section 122(b) provides the President with the discretionary authority to enter into agreements with PRPs, whereby the PRPs will perform all or a portion of an operable unit of a response action in return for reimbursement of an agreed-on portion of response costs, plus interest. The intent of section 122(b) is to encourage private-party cleanups where PRPs are willing and able to perform response actions properly. These "mixed funding" agreements should encourage a PRP or a group of PRPs to settle when, for example, the other PRPs either refuse or lack the funds to participate in a settlement. Therefore, while the Agency strives to obtain complete cleanup by PRPs or to collect 100 percent of cleanup costs in every case, it will consider settlement proposals for less than 100 percent of cleanup activities or costs in certain limited circumstances.

The Agency's Interim CERCLA Settlement Policy (50 FR 5034 *et seq.*, February 5, 1985) and guidance entitled "Evaluating Mixed Funding Settlements under CERCLA" (53 FR 8279 *et seq.*, March 14, 1988) contain a number of criteria or factors to be used in considering offers from PRPs for less than 100 percent of cleanup. The criteria or factors include the nature and volume of wastes, the PRPs' ability to pay, the strength of available evidence, public interest considerations, the nature of the case remaining after partial settlement, and other mitigating and aggravating factors. If the Government determines on the basis of such factors to accept an offer for less than 100 percent of cleanup costs, it could then determine whether allowing preauthorization would be useful to expedite cleanup.

This approach is fully consistent with joint and several liability under CERCLA. First, it involves a pragmatic determination by the Government that settlement for less than 100 percent will facilitate cleanup. Second, it does not involve a Government apportionment

scheme to allocate costs among responsible parties. Third, the Government retains its discretion to pursue an action against non-settling parties for the Fund-reimbursed portion of a PRPs' response.

In addition to preauthorization, which is the subject of this proposed rule, the guidance "Evaluating Mixed Funding Settlements under CERCLA" discusses two other types of mixed funding: "cash-out" and "mixed work." Consult the guidance for more information on these types of mixed funding agreements.

The partial reimbursement of PRPs' costs under the preauthorization type of mixed funding will occur through the response claims mechanism. While applications for preauthorization may be filed at any time prior to undertaking work for which reimbursement will be sought, EPA will not consider any application for preauthorization from PRPs outside of negotiations aimed at reaching a judicial or administrative settlement. That is, if EPA has not initiated negotiations with PRPs, an application for preauthorization will serve to notify EPA that a PRP wishes to initiate negotiations with EPA. The Agency will not consider preauthorization of response actions to be conducted by PRPs until negotiations are underway. Preauthorization of PRPs generally will not become effective until the consent decree or administrative order is entered.

EPA is exploring methods to streamline the application process for PRPs seeking preauthorization. Such streamlining may incorporate by reference available documents (e.g., RI/FS, ROD) and thereby reduce the amount of information to be submitted by PRPs and the time required to prepare the application for preauthorization. EPA requests comment on whether and how the regulation can assure that the Agency receives necessary information yet does not require unnecessary submissions. EPA expects to issue subsequent guidance reflecting any streamlining of the process.

Section 122(d)(3) of CERCLA authorizes the use of an administrative order or a consent decree to enable a PRP to conduct an RI/FS. However, preauthorization of an RI/FS in the context of a settlement agreement is not likely unless the PRPs agree to undertake any response action EPA may subsequently determine is necessary. The Agency has concluded that it would be an inefficient use of resources to negotiate settlement agreements limited in scope to an RI/FS. In addition, there is generally insufficient information available during the early stages of negotiation to evaluate fully the merits of a mixed funding agreement. However, where the PRP enters into negotiations with EPA for remedial design and/or remedial action, it is EPA's policy to consider the extent to which the PRP has cooperated with the Government in determining the percentage of reimbursement for such subsequent remedial actions at the site.

It should also be noted that section 104(a)(1) of CERCLA requires that certain conditions be met before EPA authorizes a responsible party to conduct either an RI or an FS. First, the Agency shall determine that the party is qualified to conduct the RI/FS. Second, EPA must contract or arrange for a qualified person to assist in overseeing and reviewing the conduct of the RI/FS. Third, the responsible party shall agree to reimburse the Fund for any cost incurred by the Agency through such an oversight contract or arrangement.

EPA will pay claims submitted by FRPs who are preauthorized up to a specified maximum amount only to the extent that such parties are in compliance with the order or consent decree. The Fund share of any preauthorized response action will not be available until either an agreed-upon stage of a cleanup or the entire cleanup is completed. Unless cleanup is conducted in complete satisfaction of the terms and conditions set forth in the administrative order or consent decree and the PDD, PRPs will not be entitled to full reimbursement. Further, § 300.700(g) of the proposed revised NCP (§ 300.71(d) of the current NCP) states that a response completed by any party (including a PRP) does not of itself release parties from liability to the Government under CERCLA. Response actions preauthorized in the context of orders or decrees will be governed by the NCP provisions regarding actions taken pursuant to sections 106 and 122 of CERCLA and other requirements established by this regulation as ultimately promulgated.

Section 122(b) requires EPA to take all reasonable efforts to require the non-settling PRPs to reimburse the Fund for the amount of the claim. CERCLA requires that EPA acquire by subrogation the rights of the claimant to recover his/her response costs once the Agency awards the claim.

Under a settlement pursuant to section 122(b) of CERCLA, if there is a failure of the original remedial action, the Fund may be available for the reimbursement of some costs of any new cleanup required, but is obligated only for that proportion contributed by the Fund for the original remedial action. (*See* section 122(b)(4)). However, the Fund is not obligated to reimburse the claimant for subsequent remedial actions if those subsequent remedial actions are necessary as a result of the failure of the claimant, his/her employees or agents, or any third party to perform properly the required response activities. Required response activities include those specified by: the administrative order or consent decree, any modification to such order or decree approved by EPA, or by the PDD, which specifies many of the terms and conditions of reimbursement.

Section 122(b) authorizes not only that a portion of a PRP's response costs be reimbursed, but also that interest be paid. Interest will accrue on amounts due the PRP(s) if EPA fails to pay the amount within 60 days of EPA receipt of a complete claim from the settlors. A completed claim is a demand for a sum certain that includes all documentation required to substantiate the appropriateness of the amounts claimed. Where the PRPs submit a claim that is technically complete, but for which EPA requires additional information in order to evaluate the amount claimed, interest will not accrue on the claim until 60 days after EPA's receipt of the requested additional information. The rate of interest paid on a claim is the rate of interest on investments of the Fund established by subchapter A of chapter 98 of the Internal Revenue Code of 1954.

VI. Submission and Evaluation of Applications for Preauthorization

Preauthorization of a response action may be obtained only in accordance with this regulation, once these rules are promulgated and effective. In the meantime, preauthorization will be determined on a case-by-case basis. Unless otherwise agreed to by the Agency, the following are not deemed to be preauthorization: (1) Terms, provisions or requirements of court judgments, (2) consent decrees, (3) administrative orders, or (4) any other consensual agreement with EPA requiring a response action. The previous section specifies the procedures for preauthorization of a response action to be conducted by PRPs.

Forms and instructions for submitting an application for preauthorization may be obtained from any EPA Regional Office. The current addresses for these offices are contained in the Appendix to this preamble. The preauthorization application, EPA Form 2075-3, "Application for Preauthorization," must be filled out completely, signed, and submitted to EPA, 401 M Street, SW., Washington, DC 20460, Attention:

Director, Office of Emergency and Remedial Response (OS–220).

A. Confidential Business Information

A person may assert a claim of business confidentiality for information submitted as part of an application for preauthorization or a claim against the Fund. Information claimed confidential will be disclosed by EPA only to the extent permitted by CERCLA, this proposed rule, and 40 CFR part 2, Subpart B. The applicant or claimant must assert his/her claim at the time the information is submitted to EPA by clearly marking the specific information claimed confidential. Items should be marked confidential as prescribed on the forms. For information either on the forms or in the attachments to the forms, items claimed confidential should be circled or bracketed. Unless a business confidentiality claim is asserted in this manner at the time the application for preauthorization or claim against the Fund is first filed, EPA will deem the applicant or claimant to have waived any rights to confidentiality for that information, and the information may be made public with no further notice.

Any response claimant or applicant claiming information confidential must submit two copies of his/her submittal: a complete copy containing all information claimed confidential clearly marked as such and a redacted copy from which only information claimed confidential has been deleted. EPA will assume that the redacted copy accurately deletes any information claimed confidential. EPA will not consider an application for preauthorization to be complete or a claim against the Fund to be perfected until the applicant/claimant supplies a complete version and a redacted version of any submittal which contains information claimed as business confidential.

B. Criteria for Evaluating Applications for Preauthorization

In determining whether to approve a response action through the preauthorization process, EPA will evaluate information submitted by the applicant according to the criteria described below. The criteria EPA will use to evaluate the advisability of using the claims process, compared to other mechanisms, include: (1) Priority; (2) proposed approach, projected costs, and schedule for cleanup; (3) capabilities and experience of the applicant; and (4) consultation with the State or Indian Tribe. EPA will, on the basis of its evaluation, develop a PDD, which will establish a record of the Agency's decision regarding preauthorization of a site-specific response action. The PDD will contain the terms and conditions that must be satisfied in order for a claimant to be reimbursed from the Fund.

1. Priority—Significance of Threat

As stated above, EPA must ensure that Fund expenditures are used to address the most significant threats to public health, welfare, and the environment. EPA will, through the preauthorization process, evaluate whether the applicant has demonstrated that the proposed cleanup merits expenditure of Fund monies. Section 104 of CERCLA limits the circumstances under which Fund monies may be used to respond to: (1) The release or substantial threat of release of hazardous substances; and (2) the release or substantial threat of release of pollutants or contaminants that may present an imminent and substantial endangerment to public health or welfare.

For removal actions, EPA will, as proposed in § 300.415(b)(2) of the proposed revised NCP (§ 300.65(b)(2) of the 1985 NCP), evaluate the information submitted to determine whether a threat to public health, welfare, or the environment exists (e.g., exposure of nearby populations, contamination of drinking water or sensitive ecosystems, weather conditions, threat of fire or explosion).

For remedial actions, EPA will carefully evaluate the threat (e.g., population at risk, routes of exposure, amount and concentration of substances, whether the substances are on the CERCLA section 102 toxicological lists, area hydrogeology, climate, likelihood of future releases, extent of possible migration, and extent to which contamination levels exceed health and environmental standards). Section 118 of CERCLA provides that high priority is to be given to facilities where the release resulted in closing drinking water wells or the contamination of a principal drinking water supply.

2. Proposed Approach, Projected Costs, and Schedule for Cleanup

EPA will evaluate the proposed removal, remedial planning, or remedial action under the NCP and will be guided by the proposed revisions of the NCP and these proposed response claims procedures. The proposed response action must be a cost-effective means of addressing the release or threat of release at issue. EPA will also evaluate: (1) The consistency of the proposed response action with other environmental requirements, (2) the extent to which the applicant has assured timely initiation and completion of response actions and (3) reporting and record-keeping requirements. As set forth in the NCP, EPA encourages response approaches that utilize new and innovative technology and/or offer an alternative to land disposal. However, where the proposed action would implement a remedial action previously selected by EPA, the Agency does not contemplate undertaking a new analysis of that remedy.

EPA will evaluate the estimated cost based on: (1) Methodology used for the estimates (including the applicant's use of the differing site conditions clause, if appropriate); (2) the reasonableness of estimates; (3) the necessity of proposed activities; and (4) the applicant's proposed procurement method (including the use of sealed bidding, contractor selection criteria, approach to contracts management, and accounting procedures). Where feasible, costs will be compared against costs for similar activities under contracts and cooperative agreements with States, political subdivisions, or Indian Tribes. Similarily, EPA will consider the schedule proposed by the applicant against the time required to implement activities under contracts and cooperative agreements. Contracts or cooperative agreements are likely to be used (assuming agreement with the State, political subdivision, or Indian Tribe) where the comparison between claims and such agreements results in a marginal advantage for claims. As stated earlier, the contract and cooperative agreement mechanisms offer advantages over the claims mechanism.

3. Technical Capabilities and Experience

EPA will evaluate whether the application demonstrates: (1) a knowledge of the NCP and EPA procedures; (2) sufficient engineering, scientific, or other technical expertise necessary to evaluate the appropriate extent of remedy; (3) the ability to handle any on-site emergency action; (4) the ability to oversee the design of remedial actions; (5) the ability to manage any necessary contracts (including change order management, termination, and re-bidding and close-out); (6) the ability to manage the sampling plan; (7) the ability to furnish continuous construction oversight; and (8) the ability to implement the removal or remedial action. EPA will evaluate the applicant's experience, technical and financial capabilities based upon the demonstrations contained in the preauthorization application. EPA will

also evaluate the applicant's proposed quality control and quality assurance program against EPA's quality control and quality assurance program guidelines.

4. State and Indian Tribe Consultation

Sections 104(c)(2) and 126 of CERCLA provide that EPA will consult with the affected State(s) or Indian Tribe(s) before determining the appropriate remedial action to be taken at a site pursuant to section 104. EPA will consult with the affected State(s) or Indian Tribe(s) during its review of a request for preauthorization of a remedial planning study or a remedial action, unless the applicant has already obtained such a letter of cooperation (see Section IV.D.2.f). EPA will consider the views of the State(s) or Indian Tribe(s) in evaluating the application for preauthorization. The applicant's submission of a letter signed by the designated State or Indian Tribe hazardous waste official will minimize the time required for coordination and consultation with States or Indian Tribes. This letter should state that the State or Indian Tribe: (1) Concurs with the proposed action, and (2) assures its cooperation in the proposed response action.

5. Summary of Criteria for Preauthorization

In summary, EPA will approve a response action through the preauthorization process only when the Agency determines that a Fund-reimbursed private-party response is the appropriate means to achieve site cleanup. The proposed expenditures must be reasonable and the proposed activities must be necessary to the response action at issue. EPA will, as appropriate, consult with the affected State or Indian Tribe before approving an application for preauthorization, unless the applicant supplies a letter of cooperation signed by the designated State or Indian Tribe official. EPA may approve all or any portion of a response action at a site, but will not approve less than a stage of an operable unit (see section IV.C.). EPA may approve a private party to do planning work (e.g., RI/FS). EPA's approval of an application for preauthorization of construction constitutes acceptance of the proposed remedy and a determination that the remedy is consistent with the NCP.

EPA will review and analyze the information contained in the application for preauthorization against the non-exclusive list of criteria proposed in § 307.23(b). EPA will generally approve the filing of a claim for the response action where:

1. The release is within the scope of CERCLA;

2. The release or threat of release merits expenditure from the Fund in view of competing demands on the Fund;

3. There is sufficient time to process the request for preauthorization (if a removal action is proposed);

4. The party liable for the release or threat of release of the hazardous substance is unknown, or if known, has been notified of the application for preauthorization and is unwilling or incapable of performing the response in a reasonable period of time;

5. The State, political subdivision, or Indian Tribe is unwilling to undertake the response action through a contract or a cooperative agreement;

6. The cost and effectiveness of the proposed response actions compare favorably with an alternative cleanup under section 104 of CERCLA;

7. The proposed response can be carried out in accordance with the NCP and other environmental requirements;

8. The applicant is eligible to file a claim and has the capabilities, experience, technical expertise, and knowledge of and familiarity with the NCP and relevant guidance necessary to carry out the proposed response action;

9. The applicant is implementing an administrative order or has entered into a consent decree with the Government regarding the site for which the request is made (if the applicant is a PRP);

10. The applicant is implementing an administrative order or has entered into a consent decree with the Government to undertake a remedial investigation and feasibility study and has affirmed that he/she will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contractor with respect to the site at issue, and agrees to reimburse the Fund for any cost incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study;

11. The proposed costs are eligible and the applicant has proposed appropriate procurement, contract management, project management, financial management and documentation procedures;

12. The applicant has met the necessary assurances, financial responsibilities, and other requirements;

13. The applicant has made the adequate provisions for long-term operation and maintenance of the response action, if appropriate;

14. The applicant has consulted with the State or Indian Tribe on the proposed response action;

15. The proposed procedures for oversight and the reporting of project issues and progress are acceptable to EPA;

16. The applicant cooperated with EPA at any earlier stage of response activity; and

17. The proposed schedule for filing a claim(s) is based on completion of the project or an operable unit.

C. Preauthorization Does Not Create Third Party Rights or Benefits

The terms and conditions set forth by EPA in the Preauthorization Decision Document (PDD) establish the requirements that the claimant must satisfy in order that costs incurred for a specific response action are eligible for reimbursement from the Fund. The terms and conditions are intended to clearly set forth the general technical, procedural and administrative requirements to be met by the claimant and are intended to benefit only the claimant and EPA. The terms and conditions contained in the PDD establish the requirements for reimbursement from the Fund. The PDD neither extends benefits to nor creates any rights in any third party. Nor is compliance with the terms and conditions of the PDD required for recovery of costs under other sections of CERCLA or other laws.

VII. Submission of Response Claims

This section describes the steps that the claimant must follow after completing the preauthorized response action.

A. Site Cleanup Following Preauthorization

Once EPA issues the PDD, the applicant may begin the preauthorized action and, upon the completion of all work or an authorized phase, submit a claim on EPA Form 2075-4, "Claim for CERCLA Response Actions," for the costs of approved activities up to the maximum dollar amount contained in the PDD. As proposed in § 300.400(h) (§ 300.61(d) of the current NCP), the lead agency may monitor (through an On-Scene Coordinator (OSC) or Remedial Project Manager (RPM)) an applicant's response actions. If, due to previously unknown or unexpected site conditions or to other factors that could not have been previously discovered by the exercise of due diligence, the applicant finds it necessary to modify the actions that EPA preauthorized, or if it becomes apparent that the project's costs will

exceed the approved costs, the applicant may submit to EPA a revised application for preauthorization. If the applicant intends to seek compensation from the Fund for activities that deviate from the activities preauthorized, additional preauthorization by EPA would then be necessary before additional or different actions can be undertaken.

B. Election to Commence a Court Action or File a Claim

Up to the point when a claimant actually files a claim for a preauthorized response action, he/she is free either to present a claim to the Fund or to sue the responsible parties under section 107 of CERCLA for the response costs. Thus, a claimant preserves the option of seeking reimbursement either from the PRP through a court action or from the Fund through invocation of the administrative process contemplated by the PDD. However, pursuant to section 112(a) of CERCLA, EPA will not consider a claim while an action for the same costs is before the courts. The claim will be returned to the claimant without a determination of its merits. Should the claimant elect to pursue a judicial remedy that proves unsuccessful, he/she is then free to pursue a claim against the Fund, if all other requirements for filing a claim are satisfied.

C. Presentation of Claims to Potentially Responsible Parties

Section 112(a) states that claims may not be submitted against the Fund unless they have first been presented to the owner, operator, or guarantor of the vessel or facility from which the hazardous substance has been released and to any other person who may be liable under section 107. If the PRP is unknown, the claimant must make a good-faith effort to identify the parties believed responsible for the release. The standard for determining what is a "good-faith" effort will depend on the circumstances of the release; however, at a minimum, it should include a search of deed records, a letter to the last known address requesting a forwarding address, and a notice in a local newspaper requesting information on, or witnesses to, the release. These efforts must be documented and must be available for EPA's review.

Upon a request from the potential claimant, EPA will provide the names and addresses of PRPs to whom the Agency has sent notice letters, or PRPs who have reported a release at the site pursuant to section 8(e) of the Toxic Substances Control Act or section 103(a) of CERCLA.

Before presentation of a claim to the Fund, a potential claimant who can identify the PRPs should make a reasonable effort to settle the claim with them. If the claim against the parties remains unsatisfied for 60 days, the potential claimant may present the claim for the preauthorized response action to the Fund for payment pursuant to section 112(a) of CERCLA. Any reply or other correspondence received from the PRPs should be retained and submitted with the claim.

If the first claim was denied by the responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by the responsible party, the denial of the first claim, or lack of response, will be considered a denial of every subsequent claim.

If the potential claimant and the PRP reach a settlement for less than the total amount of the claim, the potential claimant may submit a claim against the Fund for the difference between the amount of any settlement and the amount preauthorized only if EPA has approved any release of liability given to the PRP by the claimant.

The potential claimant may submit a claim for a preauthorized response action to the Fund if the claimant: (1) Is unable to locate the PRP; (2) is unable to reach a settlement; or (3) has obtained EPA's approval of any partial settlement between the claimant and the PRP that contains a release from liability.

D. Presentation to EPA

Only persons who have obtained preauthorization from EPA to conduct a response action and who have first presented their claim to the parties believed responsible (when identified) may submit claims for reimbursement against the Fund.

In order for a claim for reimbursement to be considered by EPA, a fully completed claims form (i.e., a "perfected" claim) must be submitted to EPA. Claimants may obtain the required claims forms and instructions from any EPA Regional Office (see Appendix).

Claims for response actions may be filed only after the response action or the preauthorized phase (e.g., RD/RA for the operable unit) has been completed and within five years of completion of the preauthorized response action. Among other things, the claims form requires: (1) Certification that the action was preauthorized, (2) a statement that the preauthorized actions were taken, (3) itemization of the claimed costs, and (4) a description of the procedures followed in identifying and searching for the parties believed responsible for the release. Forms must be completed, signed, and submitted to EPA, 401 M Street, SW., Washington, DC 20460, Attention: Director, Office of Emergency and Remedial Response (OS–220).

The maximum size of a claim award is explicitly set forth in the PDD. This ceiling is usually stated in the alternative: that the award cannot exceed a particular dollar figure or a specified percentage of response costs, whichever is lower.

For example, a PDD may authorize a single claim award for an amount not to exceed the lesser of $1 million or 15 percent of eligible response costs. If the actual costs totaled $5 million, the most the claimant could receive would be $750,000 (or 15 percent). However, if the response costs were $10 million (15 percent of which would be $1.5 million), the highest possible award would be $1 million.

In cases where the PDD authorizes multiple claims (i.e., for operable units or response stages), both the individual awards and the final total must be within the lower of the two reimbursement caps. For example, a PDD could authorize four claims, with the reimbursement cap set at $1 million or 15 percent of response costs. As the following scenarios indicate, each of the four claim awards cannot exceed 15 percent of the eligible response costs represented by the particular claim. However, if a particular award would cause the total to exceed $1 million, that award may be for substantially less than 15 percent of eligible response costs.

In Scenario A, the most that can be awarded for Claim 4 is $100,000. If EPA would award 15 percent of the $3 million response costs, this would cause the total award to exceed the $1 million cap. The interaction between the 15 percent cap for individual awards and the $1 million cap for overall awards in our example is further illustrated in Scenarios B and C.

Claim	Actual response cost (in millions)	Highest possible award (in thousands)	Award to date (in thousands)
Scenario A			
1	$2	$300 (or 15%)	$300
2	1	150 (or 15%)	450
3	3	450 (or 15%)	900
4	3	100	1,000
Scenario B			
1	3	450 (or 15%)	450
2	3	450 (or 15%)	900
3	3	100	1,000
4	3	0	1,000
Scenario C			
1	1	150 (or 15%)	150
2	1	150 (or 15%)	300

Claim	Actual response cost (in millions)	Highest possible award (in thousands)	Award to date (in thousands)
3	1	150 (or 15%)	450
4	1	150 (or 15%)	600

VIII. EPA Review and Payment of Claims Against the Fund

Upon receiving a claim, EPA will review and analyze the forms and documentation and determine whether all filing requirements have been met. Once the claimant has complied with all filing requirements, the claim will be considered "perfected." When EPA is unable to evaluate the claim because of omissions in filed documents, the Agency will return the materials and advise the claimant of specific problems with the filing. When EPA needs additional information to evaluate the claim's validity, EPA will suspend further processing of the claim and will request that the claimant provide the necessary information. A claim that EPA returns because of a filing deficiency may be corrected and resubmitted. Failure of the claimant to provide the information in a timely manner can form the basis for denial of the claim. As proposed in §§ 300.120(e)(3) and 300.400(h) (§§ 300.33(b)(14)(iii) and 300.61(d) of the current NCP), the OSC/RPM may review the response for consistency with the preauthorized response actions.

EPA may adjust claims and will make awards of response claims only to the extent that the Agency determines that the expenditures were necessary to carry out the preauthorized response action. EPA's review of the expenditures will include: (1) The documentation supporting all claimed costs under generally accepted accounting principles and practices consistently applied; and (2) documentation that all contracts were awarded using to the maximum extent practicable, open and free competition (i.e., formal advertising, competitive negotiations, or other generally accepted procurement methods). These criteria are designed to conserve Fund monies and protect against fraud and abuse. The claimant may demonstrate the reasonableness of claimed costs through reference to cost estimates by firms qualified in such areas, the results of competitive procurements for similar activities, or documentation of market costs based on similar procurements by others (assuming such prices were arrived at through free and open competition).

As provided in proposed § 307.32(i), if EPA determines (based on its monitoring or subsequent evaluation) that the response action is ineffective due to acts or omissions of the claimant, payment of the claim by EPA will be adjusted accordingly.

Where a claimant disagrees with the amount of an award, the claimant may, within 30 days of receiving notice of the decision, request that EPA arrange for an administrative hearing (section 112(b) of CERCLA). In such a hearing, the claimant bears the burden of proof. The administrative hearing shall be conducted by an Administrative Law Judge (ALJ) and shall proceed in accordance with 5 U.S.C. 554 and any rules that EPA may promulgate. All administrative decisions shall be in writing, with notification to all appropriate parties. Moreover, pursuant to section 112(b)(4) of CERCLA all decisions shall be rendered within 90 days of submission of the claim, unless all parties agree in writing to an extension, or EPA, in its discretion, extends the time limits for a period not to exceed 60 days.

Pursuant to section 112(b) of CERLA, awards from the Fund shall be made within the following time periods. First, after EPA's decision whether to award or deny a claim, the claimant has 30 days to request an administrative hearing. If the claimant does not exercise this option, EPA must pay any award within 20 days of the expiration of the period for administrative appeal. Thus, the claimant shall receive reimbursement of costs from the Fund within 50 days of the Agency's determination of an award if he/she does not exercise his/her option of requesting an administrative hearing.

If, however, the administrative hearing option is exercised, the time periods shift. Once the ALJ determines whether to award or deny the claim, any party has 30 days to decide whether to appeal the ALJ's determination to the appropriate Federal district court. If no party decides to exercise this option, the Fund must pay any award within 20 days of the expiration of the appeal period. Therefore, payment of any claim shall occur within 50 days of an ALJ determination, if no party appeals.

Finally, if a party does not seek judicial review, EPA will award the claim within 20 days of the final judicial decision (which may be a decision of a Federal district court, a Federal court of appeals, or the U.S. Supreme Court, depending on the history of the case).

A claimant receiving an award from the Fund must retain the documentation and any other records relating to the claim, and must provide EPA with access to such records. These records must be maintained for ten years from the date of award of the final claim from the Fund. A ten-year record retention period is established to: (1) Create a window beyond the six-year statute of limitations established by section 112(d) of CERCLA; (2) permit the completion or resolution of all issues related to any litigation, claim, negotiation, audit, cost recovery, or other action involving the records for Superfund expenditures; and (3) create a uniform period for documentation involving Superfund expenditures. Before the records are destroyed, the claimant must notify EPA of the location or the records and allow EPA the opportunity to take possession of the records.

Section 112(c)(1) states that payment of any claim shall be subject to the claimant(s) subrogating to the United States all rights as claimant to the extent that the claimant's response costs are compensated from the Fund. Further, the claimant(s) and contractors and subcontractors shall furnish the personnel, services, documents, and materials needed to assist the United States in any cost recovery action that it may initiate. In particular, the claimant's contractors and subcontractors shall be available to testify in all proceedings relating to EPA's cost recovery efforts. All of the claimant's contracts shall include a specific requirement that the contractors and subcontractors agree to provide this cost recovery assistance.

Payment of a claim indicates EPA's judgment that the claimant incurred response costs pursuant to the PDD and that all or a portion of those costs should be reimbursed. Such payment does not denote acceptance of the response action for purposes of compliance with the consent decree. For purposes of consent decrees, the Agency will issue a certificate of completion to denote final acceptance of the adequacy and quality of the response work.

IX. Notification of Concerned Parties Regarding Limitations to Response Claims

Section 111(o) of CERCLA requires that the Agency develop and implement procedures to inform certain persons concerning limitations on payment of response claims. Those persons are "concerned local and State officials and other concerned persons." Moreover, this notification is to occur "as soon as practicable" after the site is included on the NPL.

The Agency proposes to institute two procedures to notify concerned parties of limitations on the payment of

response claims. First, a citation to this proposed rule (after promulgation, the promulgated rule), along with a brief statement of its contents, will be published in the Federal Register preamble each time a site is added to the final NPL (see Appendix C). Second, the public docket established for each NPL site by EPA Headquarters and the applicable EPA Region will contain a summary of response claims limitations, along with a citation to this proposed rule. A copy of the document that will be placed in these public dockets is attached as Appendix D. The Agency solicits comments on this approach.

X. Regulatory Analyses

Proposed and final rules issued by Federal agencies are governed by several statutes and executive orders. These include Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order No. 12291

Executive Order No. 12291 requires that proposed regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget. A Regulatory Impact Analysis is required for a "major" rule. According to E.O. 12291, "major" rules are regulations that are likely to result in:

(1) An annual adverse (cost) effect on the economy of $100 million or more; or

(2) A major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this regulation is a "non-major" rule under Executive Order 12291 because it is unlikely to result in any of the economic impacts identified above. Therefore, the Agency has not prepared a Regulatory Impact Analysis for this regulation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." The response claims regulation involves reimbursement of the costs of certain parties for responding to a hazardous substance release. This is a benefit authorized by CERCLA, and does not adversely affect the private sector economy. EPA therefore certifies that this regulation will not have a significant impact on a substantial number of small businesses, organizations and units of government. EPA certifies that a Regulatory Flexibility Analysis is not necessary.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1304) and a copy may be obtained from Carl Koch, Information Policy Branch; U.S. Environmental Protection Agency; 401 M Street, SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2739.

Public reporting burden for the collection of information under EPA Form 2075-3, "Application for Preauthorization of Response Actions," for a response action is estimated to vary from 95 to 173 hours per response, with an average of 134 hours per response. These burden estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Public reporting burden for the collection of information under EPA Form 2075-4, "Claim for CERCLA Response Action," is estimated to vary from 25 to 58 hours per response, with an average of 42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimates or any other aspects of this collection of information, including suggestion for reducing this burden to the following addresses: Chief, Information Policy Branch, (PM-223); U.S. Environmental Protection Agency, 401 M Street, SW.; Washington, DC 20460 and Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW., Washington, DC 20503; Attention: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

XI. List of Subjects in 40 CFR Part 307

Administrative practices and procedures, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Dated: August 14, 1989.

William K. Reilly,

Administrator.

Appendix

Forms applicable to the CERCLA response claims process, EPA Form 2075-3 and EPA Form 2075-4 may be obtained from and must be submitted to EPA Headquarters, CERCLA Response Claims, Office of Emergency and Remedial Response (OS-220), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Forms may also be obtained from the EPA regional offices at these addresses:

(a) Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203
(b) Region II, 26 Federal Plaza, New York, New York 10278
(c) Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107
(d) Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365
(e) Region V, 230 South Dearborn Street, Chicago, Illinois 60604
(f) Region VI, 1445 Ross Avenue, Dallas, Texas 75202
(g) Region VII, 726 Minnesota Avenue, Kansas City, Missouri 66101
(h) Region VIII, One Denver Place, Denver, Colorado 80202
(i) Region IX, 215 Fremont Street, San Francisco, California 94105
(j) Region X, 1200 Sixth Avenue, Seattle, Washington 98101

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended by adding Part 307 to read as follows:

PART 307—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) CLAIMS PROCEDURES

Subpart A—General

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

Subpart C—Procedures for Filing and Processing Response Claims

Authority: 42 U.S.C. 9601 *et seq.* and Executive Order 12580, Sections 4 and 9, 3 CFR, 1987 Comp., p. 193 (52 FR 2923; January 29, 1987).

Subpart A—General

§ 307.10 Purpose.

This regulation prescribes the appropriate forms and procedures for presenting claims for necessary response costs as authorized by section 112(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (hereinafter referred to as CERCLA, or the Act) (42 U.S.C. 9601 *et seq.*). Such claims may be presented to the Hazardous Substance Superfund (the Fund) established by section 9507 of the Internal Revenue Code of 1986. See section 101(11) of CERCLA.

§ 307.11 Scope and applicability.

Claims for responses to a release or substantial threat of release of a hazardous substance into the environment; responses to a release or substantial threat of release of any pollutants or contaminants into the environment, which may present an imminent and substantial danger to public health or welfare; and response actions undertaken pursuant to settlement agreements in which the Federal Government agrees to reimburse a portion of the cost, may be submitted only through the procedures established by this regulation. Under this regulation, persons may bring claims for necessary costs incurred in carrying out the National Contingency Plan (NCP or the Plan) (40 CFR Part 300) developed under section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) and revised pursuant to section 105 of CERCLA. Only response actions that EPA has preauthorized are eligible for reimbursement through the claims process of section 112 of CERCLA. Authority for the payment of claims for response costs is provided by section 111(a)(2) of CERCLA. Authority for the reimbursement of certain costs incurred by parties to a settlement agreement entered pursuant to section 122 of CERCLA is provided by section 122(b) of CERCLA.

§ 307.12 Use of number and gender.

As used in these regulations, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 307.13 Definitions.

Terms that are not defined in this section or restated herein, shall have the meaning set forth in section 101 of CERCLA or the 1985 NCP or any final revision thereto. *As used in this regulation, the following words and terms shall have the meanings set forth below:*

Act or *CERCLA* both mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

Administrative Hearing means an administrative adjudication required by section 112(b)(2) of CERCLA in the event a claimant contests a determination of his claim made by the U.S. Environmental Protection Agency (EPA).

Assistance Agreement means the legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose. It is either a grant, cooperative agreement, or Superfund State Contract (see 40 CFR part 35) and will specify: budget and project periods; the Federal share of eligible project costs; a description of the work to be accomplished; and any special conditions.

Claim means a demand in writing for a sum certain presented to the Fund in accordance with sections 111 and 112 of CERCLA.

Claimant means any person who presents a claim to the Fund for reimbursement under section 112(b)(1) of CERCLA.

Contractor Claim means the disputed portion of a written demand or written assertion by any contractor who has contracted with a person (i.e., the owner) for the conduct of a preauthorized response action, seeking as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or related to a contract, which has been finally rejected or not acted upon by the owner and which is subsequently settled by the owner or is awarded by a third party in accordance with the disputes clause of the contract document.

Eligible Claim means any claim that has satisfied the requirements set forth in § 307.21(b) of this rule.

Facility as defined by section 101(9) of CERCLA, means any:

(1) Building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or

(2) Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

Fund means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

Hazardous Substance as defined by section 101(14) of CERCLA, means:

(1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*);

(2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA;

(3) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*) (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);

(4) Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act;

(5) Any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7401 *et seq.*); and

(6) Any imminently hazardous chemical substance or mixture with respect to which the Administrator of EPA (Administrator) has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under paragraphs (1) through (6) of this definition, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

National Contingency Plan, NCP, or the Plan means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) developed under section 311(c) of the Federal Water Pollution Control Act and revised pursuant to section 105 of CERCLA.

Necessary Costs means "necessary response costs" as required by section 111(a)(2) of CERCLA for Fund reimbursement of a preauthorized response action. Necessary response costs are costs determined to be:

(1) Required (based upon the site-specific circumstances);

(2) Reasonable (nature and amount do not exceed that estimated or which would be incurred by a prudent person);

(3) Allocable (incurred specifically for the site at issue); and

(4) Otherwise allowable (consistent with the limitations and exclusions under the appropriate Federal cost principles). *See* OMB Circular A–122 (non-profit organizations); OMB Circular A–87 (States and political subdivisions); and 48 CFR 31.1 and 31.2 (profit-making organizations).

NPL means the National Priorities List established pursuant to section 105 of CERCLA and 40 CFR 300.425 [1] (§ 300.66 of the existing 40 CFR), which consists of uncontrolled hazardous substance facilities in the United States that need to be addressed under CERCLA authorities. Only NPL sites are eligible for Fund-financed remedial action.

Operable Unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site. Operable units will not impede implementation of subsequent actions, including final action at the site.

Party means EPA or a claimant.

Perfected means the point at which EPA determines that the written demand for a sum certain (i.e., claim) has all the documentation required to substantiate the appropriateness of the amounts claimed.

Person as defined by section 101(21) of CERCLA, means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

Political Subdivision means any general purpose unit of a local or State government.

Pollutant or Contaminant as defined by section 101(33) of CERCLA, includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14) (A) through (F) of the Act, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

Preauthorization means EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP. The process of preauthorization consists of three steps:

(1) EPA's receipt of the application for preauthorization;

(2) EPA's review and analysis of the application; and

(3) EPA's issuance of the Preauthorization Decision Document (PDD) which sets forth the terms and conditions for reimbursement.

Preauthorized response actions are response actions approved through the preauthorization process.

Respond or Response as defined by section 101(25) of CERCLA, means remove, removal, remedy, and remedial action, all such terms (including *removal* and *remedial action*) including enforcement activities related thereto.

Response claim means a preauthorized demand in writing for a sum certain for response costs referred to in section 111(a)(2) of CERCLA, and for certain costs of actions referred to in section 122(b)(1) of CERCLA.

§ 307.14 Penalties.

(a) If any person knowingly gives a material statement or representation in the application for preauthorization or in the claim that is false, misleading, misrepresented, or misstated, and EPA relies upon such a statement or representation in making its decision, the preauthorization or the award by EPA may be withdrawn following written notice to the claimant.

(b) Any person who knowingly gives, or causes to be given, any false information as part of an application for preauthorization or of a claim (including any person who meets the conditions of paragraph (a) of this section) may, upon conviction, be fined or imprisoned in accordance with CERCLA section 112(b)(1) and other laws.

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

§ 307.20 Who may present claims.

(a) Subject to the provisions of this subpart, claims for the costs of response actions may be asserted against the Fund by any person other than the United States Government, States, and political subdivisions thereof, except to the extent the claimant is otherwise compensated for the loss. States and political subdivisions may assert such claims if they are potentially responsible parties subject to an agreement reached pursuant to section 122(b)(1) of CERCLA.

(b) Claims presented by an individual must be signed by that individual. If, because of death, disability, or other reasons satisfactory to EPA, the foregoing requirement cannot be fulfilled, the claim may be filed by a duly authorized agent, executor, administrator, or other legal representative. A claim presented by an entity or an authorized agent, executor, administrator, or other legal representative must be presented in the name of the claimant. The claim must be signed by the authorized agent, executor, administrator, or other legal representative (including the title or legal capacity of the person signing) and be accompanied by evidence of the authority to present a claim on behalf of the claimant as authorized agent, executor, administrator, or other legal representative.

(c) A claim for response costs as to which any release from liability was executed between the claimant and a potentially responsible party may be presented against the Fund to the extent that the claimant obtained EPA's approval prior to executing such release

[1] See the proposed NCP at 53 *FR* 51394, December 21, 1988.

and provided that the other requirements of this Part are met.

(d) A foreign claimant may present a response claim to the Fund, to the same extent that a United States claimant may assert a claim, if:

(1) The requirements of § 307.21 and § 307.22 are met; and

(2) The release of a hazardous substance occurred in the navigable waters of the United States, including the territorial sea, or in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident; and

(3) The claimant is not otherwise compensated for the loss; and

(4) The hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*), or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 *et seq.*); and

(5) Recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

§ 307.21 Nature of eligible claims.

(a) Claims may be asserted against the Fund for necessary costs incurred for response actions due to a release or substantial threat of release of a hazardous substance into the environment; a release or substantial threat of release of pollutants or contaminants into the environment that may present an imminent or substantial danger to public health or welfare; or actions taken by a potentially responsible party subject to an agreement reached pursuant to section 122(b)(1) of CERCLA. Claims must be filed in accordance with § 307.22 of this regulation. Claims may be asserted for the costs of removal actions, remedial planning activities, and remedial actions.

(b) Costs will be considered to be eligible under this section if:

(1) The response action is preauthorized by EPA pursuant to § 307.22 of this regulation;

(2) The costs are incurred for activities within the scope of EPA's preauthorization;

(3) The response action is conducted in a manner consistent with the NCP; and

(4) The costs incurred are necessary costs pursuant to § 307.11 of this regulation.

(c) Money in the Fund may be used for paying any claim under this section for expenses incurred for the payment of contractor claims either through settlement of such claims or an award by a third party to the extent EPA determines that:

(1) The contractor claim arose from work within the scope of the contract at issue and the contract was for preauthorized response activities;

(2) The contractor claim is meritorious;

(3) The contractor claim was not caused by the mismanagement of the claimant;

(4) The contractor claim was not caused by the claimant's vicarious liability for the improper actions of others;

(5) The claimed amount is reasonable and necessary;

(6) The claim for such costs is filed by the claimant within 5 years of completion of the preauthorized response action; and

(7) Payment of such a claim will not result in total payments from the Fund in excess of the maximum amount for which claims were preauthorized.

(d) An award by a third party on a contractor claim under paragraph (c) of this section should include:

(1) Findings of fact;

(2) Conclusions of law;

(3) Allocation of responsibility for each issue;

(4) Basis for the amount of award; and

(5) The rationale for the decision.

(e) Money in the Fund may not be used for paying any claim under this section for expenses incurred for procurement that were not conducted in a manner that provided to the maximum extent practicable, open and free competition; unduly restricted or eliminated competition; and did not provide where applicable for the award of contracts to the lowest responsive, responsible bidder where the selection was made principally on the basis of price.

(f) Money in the Fund may not be used for paying any claim under this section for expenses incurred by a person operating pursuant to a procurement contract or assistance agreement with the United States.

(g) Money in the Fund may not be used for paying any claim under this section for expenses incurred for the payment of persons who are on the "List of Parties Excluded From Federal Procurement or Non-Procurement" at the time the contract is awarded, unless EPA approval is obtained in advance.

(h) Unless EPA waives this requirement prior to the award of a construction contract, money in the Fund may not be used for paying any claim under this section for expenses incurred under such a construction contract that does not contain a "differing site conditions" clause equivalent to the following:

(1) The contractor shall promptly, and before such conditions are disturbed, notify the claimant in writing of:

(i) Subsurface or latent physical conditions at the site differing materially from those listed in this contract, or

(ii) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

(2) Upon notification by the construction contractor, the claimant shall promptly investigate the conditions. If the claimant finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under its contract, whether or not changed as a result of such conditions, the claimant shall make an equitable adjustment and modify the contract in writing.

(3) No claim of the contractor under the differing site conditions clause shall be allowed unless the contractor has given the notice required in paragraph (h)(1) of this section. However, the claimant may extend the time prescribed in paragraph (h)(1) of this section.

(4) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(i) Where money in the Fund has been used to pay for any response costs under this section, no other claim may be paid out of the Fund for the same costs.

§ 307.22 Preauthorization of response actions.

(a) No person may submit a claim to the Fund for a response action unless that person notifies the Administrator of EPA or his designee prior to taking such response action and receives preauthorization by EPA. In order to obtain preauthorization, any person intending to submit a claim to the Fund must fulfill the following requirements *before commencing a response action:*

(1) Notify the lead agency through the National Response Center (as described in 40 CFR 300.125 [2] and § 300.36 of the

[2] See footnote 1 of § 307.13.

existing 40 CFR), if there is acute threat of fire, explosion, or direct human contact with hazardous substances, pollutants or contaminants or other emergency situation, to determine if there is sufficient time to submit an application for preauthorization;

(2) Submit an application for preauthorization (EPA Form 2075–3, found at Appendix A) to the Director, Office of Emergency and Remedial Response EPA, 401 M Street, SW., Washington, DC 20460; and

(3) Obtain the approval of the Administrator before initiating the response action.

(b) All applications for preauthorization must include, where available.

(1) A description of the location and nature of the release or threatened release of a hazardous substance or pollutant or contaminant (e.g., type and location of vessel or facility, population at risk, routes of exposure);

(2) A description of the nature and quantity of the hazardous substance or pollutant or contaminant which has been or may be released, including whether the substance is on the list of hazardous substances set forth pursuant to section 102 of CERCLA;

(3) The identity of any person who received a general or special notice letter from EPA or any known potentially responsible parties (including the applicant), and any contact with such parties, including, but not limited to, any correspondence, agreements, or litigation with such parties;

(4) Evidence of the applicant's eligibility to file a claim pursuant to § 307.20;

(5) An explanation of why the proposed response action is necessary, and how the proposed action is consistent with 40 CFR 300.700(d)(4)(ii) [3] (section 300.25(d) of the existing 40 CFR);

(6) A description of the applicant's capability (including financial and technical capability) to implement the proposed response action;

(7) Proposed schedule of activities;

(8) Projected costs of response activities, with the basis for those projections (projections shall be based on actual anticipated costs without a contingency for unanticipated conditions);

(9) The proposed contracting procedures;

(10) Proposed procedures for project management, EPA oversight, and reporting of progress of the project; and

(11) The assurances of timely initiation and completion.

(c) Applications for preauthorization to undertake a removal action shall, in addition to the requirements in paragraph (b) of this section, include:

(1) A summary or copy of the preliminary assessment; and

(2) A description of the proposed removal action for which the claim will be made, which environmental requirements are applicable or relevant and appropriate, and how the removal will comply with such requirements.

(d) Applications for preauthorization to undertake a remedial investigation and feasibility study shall, in addition to the requirements in paragraph (b) of this section, include:

(1) The scope of the proposed study;

(2) A proposed site sampling plan and quality assurance procedures;

(3) The plan for the development of alternatives;

(4) Approaches to consideration of alternatives to land disposal;

(5) Plans for initial screening of alternatives;

(6) Proposed procedures for the detailed analysis of alternatives; and

(7) Proposed considerations in selection of the remedy.

(e) Applications for preauthorization to undertake a remedial alternative other than that selected by EPA, or where EPA has not selected a remedy, shall, in addition to the requirements in paragraph (b) of this section, include a discussion of how the proposed remedy:

(1) Differs from the one selected by EPA, if applicable;

(2) Achieves protection of public health and welfare and the environment and complies with legally applicable or otherwise relevant and appropriate Federal, State, local requirements pursuant to 40 CFR 300.400(g) [4] (§ 300.71(a)(4) of the existing 40 CFR) or waivers to those requirements in 40 CFR 300.430(f)(3)(iv) [5] (§ 300.68(i)(5) of the existing 40 CFR). The application shall also include a discussion of pertinent Federal and State guidance, advisories, and criteria;

(3) Will be cost-effective as set out in section 121(a) of CERCLA and 40 CFR 300.430(f)(3) [6] (§ 300.68(i) of the existing 40 CFR);

(4) Mitigates and minimizes future risks;

(5) Improves the reliability of the remedy;

(6) Utilizes new or innovative technology, if appropriate;

(7) Employs treatment that reduces the volume, toxicity or mobility of the hazardous substances;

(8) Impacts projected costs; and

(9) Takes into account Appendix D [7] (methods of remedying releases).

(f) Applications for preauthorization to undertake a remedial action, including those described in paragraph (e) of this section, shall in addition to the requirements in paragraph (b) of this section, include:

(1) A description of the proposed remedial action for which the claim will be made;

(2) A proposed site sampling plan and quality assurance procedures;

(3) Assurance of State or Indian Tribe cooperation;

(4) A bond or other financial assurance to cover the costs of necessary long-term operation and maintenance of the response action or written assurance from the State to provide such long-term operation and maintenance;

(5) Proposed procedures using sealed bidding to select the construction contractor, or an explanation of why the applicant intends to use any other method; and

(6) Documentation showing that the response will be carried out in accordance with applicable or relevant and appropriate environmental requirements. Documentation should include the potential impacts on any environmentally sensitive areas.

(g) Claims of business confidentiality may be asserted for information submitted to EPA under this subpart. Information claimed confidential will be disclosed by EPA only to the extent permitted by CERCLA, this subpart, and Part 2, Subpart B, of this chapter.

(1) Any claim of business confidentiality must accompany the information when it is submitted to EPA. Claims must be asserted as prescribed on the forms. Items claimed confidential on the forms and attachments to the forms must be clearly marked by circling or bracketing them.

(2) The applicant or response claimant must provide EPA with two copies of its submittal if any information is claimed confidential.

(i) One copy of the submittal must be complete, with items claimed confidential clearly marked in accordance with paragraph (g)(1) of this section.

(ii) The second copy must be complete except that all information claimed as confidential in the first copy must be

[3] See footnote 1 of § 307.13.

[4] See footnote 1 of § 307.13.

[5] See footnote 1 of § 307.13.

[6] See footnote 1 of § 307.13.

[7] See footnote 1 of § 307.13.

deleted. EPA may make this second copy available to the public.

(iii) If the applicant does not provide a redacted copy, the application for preauthorization is incomplete. If the claimant does not provide a redacted copy, the claim against the Fund is not perfected. EPA will not process such submittals until it receives the redacted copy.

(3) If a submitter of a response claim or an application for preauthorization does not assert a claim of business confidentiality for information at the time the information is submitted to EPA, the Agency may make the information public without further notice to the submitter.

(h) In addition to the foregoing, an application for preauthorization filed by a potentially responsible party for partial reimbursement of response costs shall include:

(1) A copy of the settlement agreement, or the most recent draft of any pending agreement, reached between such parties and the Federal Government; and

(2) If the application is to undertake a remedial investigation and feasibility study, an affirmation that the applicant will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contractor with respect to the site at issue and an agreement to reimburse the Fund for any costs incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study.

(i) If it is subsequently determined that the preauthorized response actions require modification or if it appears that project costs will exceed approved costs, a revised application for preauthorization must be approved by EPA before different, or additional, actions can be undertaken, if such actions are to be eligible for compensation from the Fund.

(j) Unless otherwise specified and agreed to by EPA, the terms, provisions, or requirements of a court judgment, consent decree, administrative order (whether unilateral or on consent), or any other consensual agreement with EPA requiring a response action do not constitute preauthorization to present a claim to the Fund.

§ 307.23 EPA's review of preauthorization applications.

(a) EPA shall review each preauthorization application and will notify the applicant of the decision to grant or deny preauthorization. Decisions to grant preauthorization will be memoralized in a Preauthorization Decision Document.

(b) Each application for preauthorization must include information sufficient for EPA to determine whether the response will be consistent with 40 CFR 300.700(d) [8] (§ 300.25(d) of the existing 40 CFR). EPA will evaluate applications based on the following non-exclusive list of criteria, as appropriate:

(1) Whether the release is within the scope of CERCLA;

(2) The seriousness of the problem or importance of the response activity when compared with competing demands on the Fund;

(3) Whether there is sufficient time to process the request for preauthorization (if a removal action is proposed);

(4) Whether the party liable for the release or threat of release of the hazardous substance is unknown, or if known, has been notified of the application for preauthorization and is unwilling or incapable of performing the response in a reasonable period of time;

(5) Whether the State, political subdivision, or Indian Tribe is willing to undertake the response action through a contract or a cooperative agreement;

(6) The cost and effectiveness of the proposed response actions when compared with other alternatives;

(7) Whether the proposed response can be carried out in accordance with the NCP and other environmental requirements;

(8) The applicant's eligibility to file a claim; his capabilities, experience, and technical expertise; and his knowledge and familiarity with the NCP and relevant guidance;

(9) Whether the party is proposing to conduct a cleanup through an administrative order or a consent decree with the Government regarding the site for which the request is made (if the applicant is a potentially responsible party);

(10) Whether the applicant, if he is a potentially responsible party seeking to undertake a remedial investigation and feasibility study has affirmed that he will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contract with respect to the site at issue, and agrees to reimburse the Fund for any cost incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study;

(11) Whether the proposed costs are eligible and the applicant has proposed appropriate procurement, contract management, project management, financial management and documentation procedures;

(12) Whether the applicant has met the necessary assurances, financial responsibilities, and other requirements;

(13) Provisions for long-term operation and maintenace of the site, if appropriate;

(14) Whether the applicant has consulted with the State or Indian Tribe on the proposed response action;

(15) The applicant's proposed procedures for oversight and the reporting of project issues and progress;

(16) Cooperation of the applicant at any earlier stage of response activity; and

(17) Whether the proposed schedule for filing a claim(s) is based on completion of the project or an operable unit.

(c) The Administrator may grant preauthorization for all or part of a proposed response action, but not less than a stage of an operable unit.

(1) The Administrator may set a limit on the amount that may be claimed as reimbursement from the Fund for any response action.

(2) The Administrator may condition the preauthorization on such inspection, monitoring, reporting, safety, and long-term operation and maintenance requirements as he deems necessary. The costs of such requirements may not necessarily be reimbursed from the Fund.

(3) The Administrator may condition the preauthorization on such time period for starting and completing the response action as he may deem necessary.

(4) The Administrator may condition the preauthorization on such financial or other assurance from the claimant or other entity as he may deem necessary to ensure completion of work at the site.

(5) The Administrator will not subject potentially responsible parties who may wish to undertake a remedial investigation and feasibility study to a lesser standard of liability nor will he give such parties preferential treatment in EPA's review of applications for preauthorization.

(d) If EPA denies a preauthorization because of an insufficient balance in the Fund or the low priority assigned to the response action when weighed against other applications or uses of the Fund, the applicant may resubmit the application in another fiscal year. If preauthorization is denied because of the inability of the applicant to demonstrate his experience and capabilities, the applicant may resubmit the application form only after

[8] See footnote 1 of § 307.13.

correcting the deficiencies, or by proposing an alternative approach.

(e) If EPA grants preauthorization, the applicant may begin the approved response action subject to the terms and condition contained in the PDD. The applicant as a condition of preauthorization shall assure that the lead agency shall have such site access as may be necessary for oversight and monitoring.

(f) If the applicant is unable to initiate or complete the preauthorized response action, the applicant shall immediately notify EPA in writing.

(g) EPA will not grant preauthorization for any response actions where:

(1) The proposed action is not a response action authorized under CERCLA;

(2) There is a significant threat to the public health or the environment caused by acute threat of fire, explosion, direct human contact with a hazardous substance, or other similar hazardous situations requiring immediate action, and there is insufficient time to process an application for preauthorization;

(3) The proposed response is a remedial action and the site is not on the NPL; or

(4) The action is to be performed by a State, political subdivision, Indian Tribe through an assistance agreement with the United States, or a person operating pursuant to a contract with the United States.

(h) EPA will deny preauthorization to a person whom the Agency believes is a liable party under section 107 of CERCLA unless negotiations are underway aimed at reaching a judicial or administrative settlement. Such parties may be preauthorized under this paragraph to submit claims to the Fund for response costs up to the maximum amount specified in the Preauthorization Decision Document.

Subpart C—Procedures for Filing and Processing Response Claims

§ 307.30 Requesting payment from the potentially responsible party.

(a) A claimant must present all claims to any person who is known to the claimant and who may be liable under section 107 of CERCLA at least 60 days before filing a claim against the Fund. The presentation to the potentially responsible party must be a written request for payment, delivered either by certified mail (return receipt requested) or in such a manner as will establish the date of receipt. At a minimum this request must contain:

(1) The name of the claimant (commercial entity or individual);

(2) The name, title, and address of any authorized representative;

(3) The location of the release and cleanup;

(4) The date of the release, if known;

(5) The owner of the property, if other than the claimant;

(6) A description of the response action taken; and

(7) The amount of the request (in dollars);

(8) If applicable, notice of intent to file a subsequent application for preauthorization or claim against the Fund for additional operable units.

(b) Where the potentially responsible party is unknown, the claimant must make a good-faith effort to identify the potentially responsible party prior to submitting a claim. If the potentially responsible party is identified, the claimant must then comply with the procedures of § 307.30(a). Where a potentially responsible party cannot be identified, the claimant may submit a claim to the Fund pursuant to § 307.31. Claims submitted under this paragraph must be accompanied by documentation of efforts to identify potentially responsible parties.

(c) If the claimant and the potentially responsible party agree to a settlement involving a release from liability, the claimant may submit a claim against the Fund for any costs that are not recovered provided the claimant complies with the provisions of § 307.20(d), which require EPA's prior approval of such releases from liability.

(d) If the claim is denied by the potentially responsible party, or has not been satisfied after 60 days of presentation to such party, the claimant may submit a claim to the Fund in accordance with § 307.31.

(e) If the first claim was denied by the responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by such responsible party, the denial of the first claim, or lack of response, shall be considered denial of every subsequent claim.

§ 307.31 Filing procedures.

(a) A response claim must be submitted on EPA Form 2075–4 and must include:

(1) Documentation showing that the claimed response activities were preauthorized by EPA; and

(2) Documentation showing that the response activity was accomplished in a manner consistent with the PDD, noting any deviation from preauthorized activities; and

(3) Documentation that a search to identify potentially responsible parties was conducted in accordance with § 307.30 and of any contacts with such parties; and

(4) Substantiation that all claimed costs are necessary costs.

(b) Claimants (or their authorized representatives) may amend their claims at any time before final action by EPA. Amendment of claims after final action by EPA will be allowed only at EPA's discretion. Each amendment must be submitted in writing and must be signed by the claimant or authorized representative. The time limitations of § 307.32(i) refer to the date by which an amendment is filed.

(c) Claimants may not pursue both an action in court against potentially responsible parties and a claim against the Fund at the same time for the same response costs. EPA will return claims presented under this subpart when the Agency determines that a claimant has initiated an action for recovery of the same response costs, in court, against a party potentially liable under section 107 of CERCLA.

§ 307.32 Verification, award, and administrative hearings.

(a) Upon receipt of a response claim, EPA will verify that it complies with all filing requirements. Where the claim is incomplete or has significant defects, EPA will return the claim to the claimant with written notification of its deficiencies.

(b) A claim returned to the claimant for failure to comply with the filing requirements may be resubmitted to EPA.

(c) For purposes of this regulation, a response claim is deemed perfected when EPA determines that the claim complies fully with all filing requirements. When the claim is perfected, a notice will be provided to the claimant of EPA's receipt and acceptance of the claim for evaluation.

(d) EPA may adjust claims and in making a determination whether costs are allowable, the Agency will be guided by the Federal cost principles (non-profit organizations—OMB Circular A–122; States and political subdivisions—OMB Circular A–87; profit-making organizations—48 CFR subparts 31.1 and 31.2).

(e) In evaluating claims, EPA will determine whether the claimant has settled and satisfactorily completed in accordance with sound business judgment and good administrative practice all contractual and administrative matters arising out of agreements to perform preauthorized response actions. This includes the issuance of invitations for bids or requests for proposals, selection of

contractors, approval of subcontracts, settlement of protests, claims, disputes, and other related procurement matters. EPA will examine how the claimant assured (e.g., by the use of a subcontract administration system) that work was performed in accordance with the terms, conditions, and specifications of such agreements.

(f) Awards will be made:

(1) Only for necessary costs of completing the response action or stage of an operable unit;

(2) Only to the extent that the response actions were preauthorized by EPA pursuant to § 307.23 of this rule;

(3) Only to the extent that the cleanup was performed effectively, as provided in 40 CFR 300.120(e)(3) and 300.400(h) [9] (§§ 300.33(b)(14)(iii) and 300.61(d) of the existing 40 CFR); and

(4) Only to the extent that the cleanup was performed in compliance with the terms and conditions of the PDD.

(g) No award will be made on a claim where the claimant has released the potentially responsible party from liability unless EPA has approved the release in advance.

(h) Where a response action is determined to have been ineffective due to acts or omissions of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant, payment of the claim will be adjusted accordingly. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.

(i) For claims submitted in connection with a settlement reached under section 122(b) of CERCLA only, interest will be paid on amounts due if EPA fails to pay the amount within 60 days of a perfected claim.

(1) Interest shall accrue on the amounts due the claimant where EPA fails to pay the claim for the preauthorized response action within 60 days of EPA's receipt of a perfected claim.

(2) Where the claim is technically complete but EPA requires additional information in order to evaluate the amount claimed, interest will not accrue on the claim until 60 days after EPA's receipt of the requested additional information.

(3) The rate of interest paid on a claim is the rate of interest on investments of the Fund established by subchapter A of chapter 98 of the Internal Revenue Code of 1954.

(j) For claims submitted in connection with a settlement reached under section 122(b) of CERCLA, a preauthorized potentially responsible party will be entitled to full reimbursement only where the response action is conducted in complete satisfaction of the requirements set forth in the consent order or decree.

(k) Future site-specific actions required by preauthorized potentially responsible parties, and any future obligations on the Fund, shall be governed by § 307.42 of this rule.

(l) Any withdrawal of preauthorization will be preceded by written notice from EPA. The application for preauthorization will be deemed invalid and no award will be made from the Fund where the claimant is determined by EPA to be liable under section 107 of CERCLA for the costs for which the claim is made, and the application for preauthorization did not disclose that the claimant may be a person described as follows:

(1) The owner and operator of a vessel or a facility;

(2) Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of;

(3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance; or

(4) Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance.

(m) If EPA determines that it cannot complete its evaluation of a claim because of insufficient information, it will request the necessary information from the claimant. If EPA determines that it cannot complete its evaluation of a claim because the records, documents, and other evidence were not maintained in accordance with generally accepted accounting principles and practices consistently applied, or were for any reason inadequate to demonstrate that claimed costs are necessary costs, EPA will adjust the claim accordingly. Further consideration of such amounts will depend on the adequacy of subsequent documentation. Any additional information requested by EPA must be submitted within 30 days unless specifically extended by EPA. The failure of the claimant to provide in a timely manner the requested information without reasonable cause may be cause for denial of the claim.

(n) Once the claim is perfected, EPA will proceed to:

(1) Make an award on the claim; or

(2) Decline to make an award.

(o) If the claimant is dissatisfied either with EPA's denial of a claim or with the amount of an award, the claimant may request that EPA arrange an administrative hearing in accordance with section 112(b) of CERCLA and 5 U.S.C. 554. The request for an administrative hearing must occur within 30 days of being notified of EPA's decision.

(p) Notice of an award under paragraph (f) of this section will be given by First Class Mail within five (5) days of the date of the decision. Payment of approved claims will be made according to § 307.40 of this regulation.

§ 307.33 Records retention.

A claimant receiving an award from the Fund is required to maintain all cost documentation and any other records relating to the claim, and to provide EPA with access to such records. These records must be maintained until cost recovery is initiated by EPA. If, after ten (10) years from the date of award of the final claim, EPA has not initiated a cost recovery action, the claimant need no longer retain the records. The claimant shall, however, notify EPA of the location of the records, and allow EPA the opportunity to take possession of the records before they are destroyed. The claimant shall cause to be inserted in all agreements between itself and contractors performing work at the site a clause providing for the same requirement to maintain records and to provide access to records as that required of the claimant.

Subpart D—Payments and Subrogation

§ 307.40 Payment of approved claims.

(a) Payment of claims will be made, as applicable, within:

(1) 50 days of EPA's decision to make an award, if the claimant does not request an administrative hearing;

(2) 50 days of an award by an administrative tribunal if no appeal of such award is taken; or

(3) 20 days of the final judicial decision of any appeal taken.

(b) Payment of a claim shall not be seen as EPA's final acceptance of the claimant's response action. Final

[9] See footnote 1 or § 307.13.

acceptance shall await EPA's determination that the response action was conducted in accordance with the terms and conditions of the PDD or the consent order or decree, as applicable.

§ 307.41 Subrogation of claimants' rights to the Fund.

(a) The United States acquires by subrogation all rights of the claimant to recover the amount of the claim paid by the Fund from the person or persons liable under section 107 of CERCLA for the release giving rise to the response action.

(b) Claimants shall assist in any cost recovery action that may be initiated by the United States. The claimant and the claimant's contractors shall furnish the personnel, services, documents, and materials needed to assist EPA in the collection of evidence to document work performed and costs expended by the claimant or the claimant's contractors at the particular site in order to aid in cost recovery efforts. The claimant and the claimant's contractors shall also provide all requested assistance in the interpretation of documents detailing work and costs that may be needed as evidence, and shall testify on behalf of the United States in any judicial or administrative cost recovery proceeding regarding the response costs claimed. All of the claimant's contracts for implementing the Preauthorization Decision Document shall expressly require their contractors to provide this cost recovery assistance.

§ 307.42 Fund's obligation in the event of failure of remedial actions taken pursuant to Section 122.

(a) In the case of the failure of a completed remedial action taken by a potentially responsible party pursuant to a remedial action preauthorized in connection with a settlement under section 122(b)(1) of CERCLA, the Fund may be available for the costs of any new cleanup required, but shall not be obligated to a proportion exceeding that proportion contributed by the Fund for the original remedial action.

(b) The Fund is not obligated by preauthorization of a response action to reimburse the claimant for subsequent remedial actions if those subsequent remedial actions are necessary as a result of the failure of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant to properly perform authorized activities or otherwise comply with the terms and conditions of the PDD, and the consent decree or order regarding the site cleanup entered into by EPA and the claimant.

Appendix A—Application for Preauthorization of a CERCLA Response Action

BILLING CODE 6560-50-M

United States Environmental Protection Agency
Washington, DC 20460

Application for Preauthorization of a CERCLA Response Action

Form Approved. OMB No. xxxx-xxxx
Expiration Date xx-xx-xx

EPA Docket Number

General Instructions: Complete all items in ink or by typewriter. If an item is not applicable to your preauthorization request, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.

I. Introductory Material

A. Name, Title and Address of Applicant(s):

B. Name of Site:

C. Eligibility:
- ☐ Individual
- ☐ PRP
- ☐ Firm
- ☐ Other
- ☐ Foreign Applicant

D. Name, Title and Address of Agent (if any) Authorized to Represent the Applicant:

II. Relates to Actual or Threatened Release of a Hazardous Substance, Pollutant or Contaminant

A. Date/time (am/pm) of release (if known):

B. Location of the release:

C. Is the release or threat of release at an NPL site? ☐ Yes ☐ No If yes, what is the site name on the NPL?

D. Provide a short description of the release or threat of release.

E. Did you contact the National Response Center? ☐ Yes If yes, provide the date and the manner of the notice:

☐ No If no, explain why not:

III. Relates to Potentially Responsible Parties (PRPs)

A. Are you a person whom EPA previously identified as a PRP for the site in question? ☐ Yes ☐ No
If yes, provide date of notice letter:

B. If you have not been identified as a PRP, do you fall within one of the four categories of potentially liable parties set forth in section 107(a) of CERCLA? ☐ Yes ☐ No
If yes, describe why.

C. Is this application to be approved in the context of a consent order or decree? ☐ Yes ☐ No

If yes, provide information as to the status of the settlement negotiations, provide the name of the relevant EPA contact person, and attach the most recent draft of any settlement agreement.

D. Have you identified any PRPs for the release or threat of release in question? ☐ Yes ☐ No

If yes, attach a list of known PRPs and describe the results of any contacts with them.

If no, describe efforts to identify PRPs.

IV. Relates to Proposed Response Action

A. Briefly summarize the proposed response action and attach a schedule of major response activities.

B. Identify which provisions of the National Contingency Plan (NCP) are applicable for the proposed types of response activity (e.g., removal, RI/FS) and describe how the proposed action will be conducted in accordance with those provisions.

C. Address how the proposed response action will be consistent with the NCP with regard to the following performance standards:

1. Worker training, health and safety, and the safety of the public.
2. Community relations plan.
3. Compliance with legally applicable, or relevant and appropriate, Federal and State environmental requirements (ARARs).

V. Relates to Applicant's Capabilities

Describe your capabilities to carry out the proposed response actions.

VI. Relates to State or Indian Tribe Consultation

Has a letter signed by the designated State or Indian Tribe official been attached? ☐ Yes ☐ No If no, explain.

VII. Relates to Long-Term Operations and Maintenance (O&M) (If applicable)

☐ I will provide a bond or other financial assurance for O&M. ☐ The State has agreed to provide for O&M.

Attach documentation to support your assertion.

VIII. Relates to Projected Costs

Provide the projected costs for each proposed response activity and attach an explanation of why each of these costs is "necessary."

1. _____ $_____
2. _____ $_____
3. _____ $_____
4. _____ $_____

TOTAL $_____

IX. Relates to Project Management

A. Describe the management structure to be put in place to implement the proposed project and to control financial matters.

B. Describe your procedures for comprehensively documenting the work performed and the costs incurred for all phases of the proposed response action.

C. Describe your procedures for reporting to EPA on the progress of the proposed project and for EPA oversight.

D. Describe your proposed procurement procedures.

Certification

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Applicant Date

CERCLA Penalty for Presenting Fraudulent Claim

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1))

Civil Penalty for Presenting Fraudulent Claim

The claimant is liable to the United States for a civil penalty of $2,000 and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, including costs of the civil action.

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001)

INSTRUCTIONS TO APPLY FOR PREAUTHORIZATION OF A CERCLA RESPONSE CLAIM

This form is to allow parties to apply for EPA preauthorization of a claim against the Hazardous Substances Superfund (Fund) as authorized by sections 111(a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). EPA preauthorization is required before a party can begin response work if that party desires Fund reimbursement of his/her response costs. The regulatory procedures for obtaining preauthorization from EPA are found at 40 CFR Part 307. The public reporting burden for the completion of this form is estimated to vary between 95 and 173 hours – averaging 134 hours per application. These estimates include the time needed to review instructions, search existing data services, gather and maintain the data needed for completing and reviewing the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) or any other aspect of this form should be sent to the following addresses:

Chief, Information Policy Branch, PM-223
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

and

Office of Information and Regulatory Affairs
Office of Management and Budget
726 Jackson Place, N.W.
Washington, D.C. 20503
Attention: Desk Officer for EPA

The applicant bears the burden for demonstrating that scarce Fund resources should be utilized for this project. Consequently, all preauthorization applications should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the applicants' best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the applicant shall attach typewritten sheets and provide clear cross-references between the items on the form and the attachments.

A number of items will also require that the applicants provide appendices. In these appendices, the applicants shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the applicant shall provide clear cross-references between this form and the appendices.

Applicants should consult 40 CFR section 307.22(g) to assert any claims of business confidentiality.

When completed this form should be sent to: U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
Attention: Director, Office of Emergency and Remedial Response (OS-220)

The sections below provide instructions for particular items on the claim form.

I. A. Provide the name, title and address of the person(s) submitting this application. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.

B-C. Self-explanatory.

D. "Agent" refers to any duly authorized agent, executor, administrator, or other legal representative of the applicant. If this preauthorization application is submitted by such an agent, he/she must present evidence of authority to so represent the applicant. (See 40 CFR Section 307.20).

II. A-C. Self-explanatory.

D. This description must include the following information: the type of vessel and facility; the type and quantity of hazardous substance (including whether the substance is listed under CERCLA section 102); and a description of the surrounding population and/or environmental risk.

E. Self-explanatory.

III. A. Check whether you are a person who EPA previously identified as a potentially responsible party (PRP).

B. Check whether you have reason to believe, without regard to whether a defense under Section 107(b) may be available, that you may be a person described as follows:

1) the owner or operator of a vessel or facility,

2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance, or

4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, or sites selected by such person, from which there is a release, or a threatened release of a hazardous substance, which causes the incurrence of response costs.

C. If you checked YES for item A or B and NO for this item, explain why this application is not to be approved in the context of a consent order or decree. Describe the status of any settlement negotiations.

D. List all PRPs known to you. Describe any contacts with PRPs and any reply from such parties. If PRPs are unknown, describe efforts to locate PRPs.

IV. A. Self-explanatory.

B. Describe the response action(s) that is the subject of this request (e.g., removal, RI/FS, selection of remedy, design, construction), and methods proposed for carrying out such actions, including site sampling plan and quality assurance procedures. Address the requirements contained in 40 CFR 307.22.

C. Worker/community health and safety plan. The worker plan must comply with OSHA Safety and Health standards at 29 CFR Part 1910.120. The community plan must address the protection of area residents from the physical, chemical and/or biological hazards particular to the site and the selected response.

Community Relations Plan. The applicant need not develop a plan if the response action is of short duration or a community relations plan already exists for the site at issue.

ARARs. See 40 CFR Sections 300.400(g), 300.430(f)(3)(iv).

V. Include a discussion of financial and technical/scientific capabilities.

VI. If a letter of cooperation signed by the designated State or Indian Tribe is not attached to an application to undertake a remedial action, explain efforts made by the applicant to obtain such cooperation.

VII. Self-explanatory.

VIII. The figures provided on the form should be the overall cost for a particular type of response activity (e.g., removal, RI/FS, design). Documentation should be attached to support each cost figure. In addition, the applicant must explain why each of the proposed costs is "necessary." "Necessary" costs are those which are 1) required, 2) reasonable, 3) allowable and 4) allocable according to Federal cost principles. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local government and Federally recognized Indian Tribes); OMB Circular A-122 (non-profit organizations); 48 CFR sections 31.1, 31.2 (profit-making organizations).

IX. Self-explanatory.

BILLING CODE 6560-50-C

Appendix B—Claim for CERCLA Response Action

United States Environmental Protection Agency
Washington, DC 20460

Claim for CERCLA Response Action

Form Approved. OMB No. xxxx-xxxx
Expiration Date xx-xx-xx
EPA Docket Number

General Instructions: Complete all items in ink or by typewriter. If an item is not applicable to your claim, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.

I. Introductory Material

A. Name, Title and Address of Claimant(s):

B. Name of Site:

C. Preauthorization Decision Document (PDD):
Number _____
Date _____
(attach copy)

D. Name, Title and Address of Agent (if any) Authorized to Represent the Claimant:

II. Relates to Potentially Responsible Parties (PRPs)

A. Has the claimant made a reasonable effort to identify any PRPs (other than any who may be parties to this claim)? Describe those efforts.

B. Has the claimant presented a request for reimbursement to known PRPs (other than any who may be parties to the claim)?
☐ Yes ☐ No
Attach names, addresses and dates of presentation. Describe any responses.

C. If a partial settlement was reached with PRPs after presentation of the claim as described in II.B., did EPA approve any release?
☐ Yes ☐ No If no, explain.

D. Is there any action pending in court regarding this site or response actions?
☐ Yes ☐ No If yes, explain.

III. Relates to Operable Unit Claims

A. Is this a claim for an operable unit? ☐ Yes ☐ No
If no, provide the completion date of the subject response action and skip B, C, D and E.

B. How many operable units are authorized in the PDD?

C. Which operable unit are you filing a claim for at this time?

D. Is completion of the next operable unit on schedule?
☐ Yes ☐ No If no, explain.

E. Estimated date for submitting claim for the next operable unit.

IV. Relates to Response Action

A. Was the response/operable unit completed in accordance with the PDD? ☐ Yes ☐ No If yes, skip B

B. Was a modification to the preauthorization request submitted to and approved by EPA?
☐ Yes -- Supply number and date _____
☐ No -- Explain how and why response differs from PDD.

C. Was the response completed in accordance with the Statement of Work and the Work Plan? ☐ Yes ☐ No If yes, skip D

D. Explain how and why the response differs from the Statement of Work and/or the Work Plan.

E. Address how each of the PDD terms and conditions were met (in the order that they appear in the PDD). Provide documentation of such adherence in an appendix.

V. Relates to Amount of Response Claim

A. Provide the following summary information:

Re Current Claim Submission:

Type of Response Activity(ies) Represented by Claim - _____

Total Response Costs Represented by Claim - $_____

Percentage of Claimed Costs to Total Response Costs - _____ %

Dollar Amount of Reimbursement Claimed - $_____

Re Any Past Claim Awards Under the Subject PDD:

Number of Previous Claims - _____

Total Sum of Previous Awards - $_____

Re PDD:

Reimbursement Cap Set For All Claim Submissions - $_____

B. Provide the following breakdown of the response costs asserted in this claim submission:

Labor	$_____
Travel	$_____
Equipment	$_____
Materials and Supplies	$_____
Contractual Services	$_____
Other Direct Costs	$_____
Indirect Costs	$_____

TOTAL RESPONSE COSTS $_____

With the exception of contractual services, provide detailed summaries of the components of each of the above cost categories. Address how the costs incurred were required under the PDD and reasonable, allowable and allocable according to Federal cost principles.

C. Provide a cost breakdown of all contractual services performed for this claim submission. Explain how the incurred costs were required under the PDD and reasonable, allowable and allocable according to Federal cost principles.

Certification

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Claimant Date

CERCLA Penalty for Presenting Fraudulent Claim

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1))

Civil Penalty for Presenting Fraudulent Claim

The claimant is liable to the United States for a civil penalty of $2,000 and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, including costs of the civil action.

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001)

INSTRUCTIONS FOR SUBMITTING A CLAIM FOR A CERCLA RESPONSE ACTION

This form is for claims against the Hazardous Substances Superfund as authorized by sections 111 (a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). Claims can only be awarded for reasonable response costs incurred pursuant to a preauthorization decision document (PDD) issued by EPA. The regulatory procedures for obtaining preauthorization from EPA and for the submission and award of claims are found at 40 CFR Part 307.

The public reporting burden for the completion of this form is estimated to vary between 25.0 and 56 hours -- averaging 41.5 hours per claim. These estimates include the time needed to: review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) and any other aspect of this form should be sent to the following addresses:

Chief, Information Policy Branch, PM-223
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

and

Office of Information and Regulatory Affairs
Office of Management and Budget
726 Jackson Place, N.W.
Washington, D.C. 20503
Attention: Desk Officer for EPA

The claimant bears the burden for demonstrating that his response costs should be reimbursed. Consequently, all claim submissions should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the claimant's best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the claimant shall attach typewritten sheets and provide clear cross-references between the items on this form and the attachments.

A number of items will also require that the claimants provide appendices. In these appendices, the claimant shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the claimant shall provide clear cross-references between this form and the appendices.

Claimants should consult 40 CFR Section 307.22 (g) to assert any claims of business confidentiality.

When completed, this form should be sent to: U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
Attention : Director, Office of Emergency and Remedial Response (OS-220)

The sections below provide instructions for particular items on the claim form.

I. A. Provide the name, title and address of the person(s) submitting this claim. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.

B. Provide the site name as it appears on the PDD.

C. Supply the number and date of the PDD for this claim. A copy of the PDD shall also be provided in an appendix. If the claimant has been granted preauthorization to modify the PDD, these amendments must be described and copies provided.

D. "Agent" refers to any duly authorized agent, executor, administrator or other legal representative of the claimant. If this claim is submitted by such an agent, he/she must present evidence of authority to so represent the claimant.

II-IV. Self-explanatory.

V. A. Self-explanatory.

B. This item is concerned with the actual response costs incurred during the time period represented by this claim submission -- not the percentage of those response costs for which the claimant is seeking reimbursement. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local governments and Federally recognized Indian Tribes); OMB Circular A-122 (non-profit organizations); 48 CFR 31.1, 31.2 (profit-making organizations). If the claim represents more than one stage of response activity, indicate this on the form and provide similar cost breakdown in an appendix. These instructions are applicable to Item V.C. below.

C. Contractual services will vary depending on the response action performed and the operable unit represented by the claim submission. Typical categories of response activity include:

Security
Groundwater sampling
Construction
Administrative Expenses
Materials
Operation & Maintenance.

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Appendix C—Notice of Limitations on the Payment of Claims for Response Actions, Which is to be Placed in the Federal Register Preamble Whenever Sites Are Added to the Final NPL

Limitations on the Payment of Claims for Response Actions

Sections 111(a)(2) and 122(b)(1) of CERCLA authorize the Fund to reimburse certain parties for necessary costs of performing a response action. As is described in more detail at____Federal Register_____ (_____), 40 CFR Part 307, there are two major limitations placed on the payment of claims for response actions. First, only private parties, certain potentially responsible parties (including States and political subdivisions), and certain foreign entities are eligible to file such claims. Second, all response actions under sections 111(a)(2) and 122(b)(1) must receive prior approval, or "pre-authorization," from EPA.

Appendix D—Notice of Limitations on the Payment of Claims for Response Actions Which is to be Placed in Public Dockets

Statutory Limitations on the Payment of Claims for Response Actions Filed Pursuant to Section 111(a)(2) and 122(b)(1) of CERCLA

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C 9601 *et seq.*) authorizes a number of mechanisms for responding to a release, or threat of release, of hazardous substances or pollutants or contaminants. One of these mechanisms is response claims. Section 111(a)(2) of CERCLA authorizes the Environmental Protection Agency (EPA or the Agency) to compensate claimants for necessary response costs if certain conditions are met. Section 122(b)(1) of CERCLA authorizes EPA to reimburse certain potentially responsible parties for a portion of the costs of response actions conducted pursuant to a settlement agreement. These conditions are outlined below.

First, only private parties, parties to section 122(b)(1) agreements (including States and political subdivisions thereof) and foreign entities are eligible for payment through the response claims mechanism. Federal, State, and local government units, and Indian Tribes, can receive funding for response activities through other authorities of sections 111(a) and 123 of CERCLA.

Second, eligible claimants can only be reimbursed for costs that are incurred in carrying out the National Contingency Plan (NCP), 40 CFR Part 300. In order to be in conformity with the NCP, all claims must receive prior approval, or "preauthorization," from EPA. This means that before response work is initiated, the party must: (1) Notify EPA of its intent to file a claim; (2) demonstrate that the release merits priority consideration; (3) propose activities to remedy the release that can be carried out consisent with the NCP; and (4) demonstrate the capabilities necessary to carry out such activities in a safe and effective manner. In order for potentially responsible parties to be eligible for reimbursement they must conduct the response actions as specified in a consent decree or administrative order. Only if EPA preauthorizes a response action can the party begin work, and later file a claim for reimbursement of costs.

The limitations placed on the payment of claims for response actions and the procedures for filing such claims are described in more detail at____Federal Register_____ (_____), 40 CFR Part 307. Additional information can be obtained by contacting William O. Ross, Office of Emergency and Remedial Response (OS-220), 401 M Street, SW., Washington, DC 20460, (202) 382-4645, or the RCRA/CERCLA Hotline, (800) 424-9346 (or 382-3000 in the Washington DC, metropolitan area).

[FR Doc. 89-19467 Filed 9-12-89; 8:45 am]

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